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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 667

WILLIAM SMITH, JR., PETITIONER

vs.

STATE OF MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

PETITION FOR CERTIORARI FILED AUGUST 16, 1938
CERTIORARI GRANTED NOVEMBER 21, 1938

Supreme Court of the United States

OCTOBER TERM, 1962

No. 667

WILLIAM SMITH, JR., PETITIONER

vs.

STATE OF MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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[fol. 2]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

THE STATE OF MISSISSIPPI,
Madison County

September Term, A. D., 1961

INDICTMENT—Filed Sept. 20, 1961

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful men of Madison County, in the State of Mississippi, elected, impaneled, sworn, and charged to inquire in and for said County and State aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present: That William Smith, Jr., in said County and State on the 29th day of July, A. D., 1961 Wilfully, unlawfully, and feloniously forcibly ravish and carnally know Nerine Elise Gober, a female person, over the age of 12 years, and without her consent and against her will contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

WILLIAM L. WALLER
District Attorney

[File Endorsement Omitted]

[fol. 3]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

[Title Omitted]

ORDER RE TRANSFER OF PETITIONER—July 31, 1961

This cause this day came on for hearing on oral motion of Bill Waller, District Attorney in and for the 7th Circuit Court District of the State of Mississippi, for the removal of the defendant, William Smith, Jr., from the jail in and for Madison County, Mississippi, to the county jail in and for the First Judicial District of Hinds County, Mississippi, and in support of said motion presented evidence to show that the facilities of the county fail in Madison County aforesaid are inadequate for the safekeeping of the defendant and the Court having heard said motion and evidence finds that the motion is well taken.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the defendant, William Smith, Jr., is to be, and he is hereby ordered to be removed from the county jail, Canton, Madison County, Mississippi, and removed to and held in custody in the county jail in and for the First Judicial District, Hinds County, Mississippi, pending further action of this Court.

ORDERED AND ADJUDGED, this the 31st day of July, 1961.

LEON F. HENDRICK
Circuit Judge

[File Endorsement Omitted]

[fol. 4] * * *

[fol. 5]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

[Title Omitted]

ORDER RE SPECIAL VENIRE—Sept. 22, 1961

This cause was set for call on September 22nd, 1961, the same being the first Friday of the regular September 1961 term of this Court, and the defendant and his attorney were present in open court and the Court was advised by the district attorney that the State was ready for trial on Monday, September 25th, 1961, and the Defendant announced through his attorney, in open Court, that he was ready for trial on said date and then the defendant requested that a special venire be drawn for the trial of this case, whereupon the Court in the presence of the defendant and his attorney drew sixty names on the special venire for the trial of this case.

It is, therefore, ordered and adjudged that a special venire composed of sixty names be drawn in this cause returnable on the 25th day of September, 1961 at 9 A. M. pursuant to the request of the defendant. Ordered and adjudged this 22nd day of September, 1961.

LEON F. HENDRICK
Circuit Judge

[File Endorsement Omitted]

[fol. 6]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

[Title Omitted]

INSTRUCTIONS FOR THE STATE

Instruction for the State No. 1

The Court instructs the jury for the State that if you believe from the evidence in this case beyond a reasonable doubt that the defendant, William Smith, Jr., on or about July 29, 1961, in Madison County, Mississippi, did then and there wilfully, unlawfully, forcibly and feloniously assault Nerene Elise Gober, a female person over the age of 12 years and did, then and there put her in fear of great personal violence, and that thereafter at said time and place the said William Smith, Jr., did violently, forcibly and feloniously and against her will, revish and carnally know the said Nerene Elise Gober, then it is your sworn duty to find the Defendant William Smith, Jr., guilty.

GIVEN

[File Endorsement Omitted]

[fol. 7]

* * * *

Instruction for the State No. 2

The court instructs the jury for the State that you do not have to actually know that the Defendant is guilty of the crime charged before you may convict him, and that you should not hesitate to find that he is guilty because you are able to say, outside of the evidence, that he might have been innocent; but after carefully considering all of the evidence in this case, if you believe beyond every reasonable doubt that he is guilty, then it is your sworn duty to so find him guilty.

GIVEN

* * * *

[fol. 8]

Instructions for State No. 3

The court instructs the jury that in the event you find the Defendant guilty you may return one of the following verdicts:

"We the jury, find the Defendant Guilty as charged;"

Whereupon the Court shall sentence the Defendant to suffer death.

The Court further instructs the jury that if you believe from the evidence in this case beyond a reasonable doubt that the Defendant is guilty as charged in the manner and form aforesaid, then the form of your verdict may be:

"We, the jury, find the Defendant guilty as charged and direct that he be imprisoned in the State Penitentiary for the period of his natural life."

If the verdict of the jury should be in this form, the Court will direct that the Defendant be imprisoned in the State Penitentiary for the period of his natural life.

The Court further instructs the jury, however, that if they believe from the evidence in this case, beyond a reasonable doubt, that the Defendant is guilty as charged in the indictment, but the jury cannot agree upon his punishment, they should not on that account, withhold their verdict, but should certify to the Court the following verdict, to-wit:

"We, the jury, find the Defendant guilty as charged in the indictment, but cannot agree on his punishment," [fol. 9] whereupon the Court will direct that the Defendant be imprisoned in the State Penitentiary for the period of his natural life.

GIVEN

[fol. 10]

IN THE CIRCUIT COURT OF MADISON COUNTY

[Title Omitted]

INSTRUCTIONS FOR THE DEFENDANT

Instruction No. 1

The court instructs the jury for the defendant that the law starts our with the presumption that the defendant is entirely innocent of the crime charged against him and every part and parcel of it; that this presumption of the innocence of the defendant is no mere fiction, but is evidence in his favor and that this presumption accompanies the defendant as a shield, through out every step and stay of a trial, and it in itself sufficient to find the defendant not guilty, unless it has been broken down, over come and shattered by competent and credible testimony, satisfying the minds and consciences of a jury of the guilt of the defendant beyond every reasonable doubt and to a moral certainty. It is not sufficient for the jury to believe that the defendant is probably guilty nor will a mere preponderance of the evidence, or the weight of any preponderant testimony, justify a conviction, but the jury must be satisfied from the evidence beyond a reasonable doubt and to a moral certainty that the defendant is guilty before they can convict.

GIVEN

[File Endorsement Omitted]

* * * *

[fol. 11] *Instruction No. 2*

The court instructs the jury for the defendant that if you believe from the evidence that the alleged confession was untrue you should disregard it or if you believe from the evidence that it was made under the influence of hope or fear, you may take this into account in determining what weight or credit, if any you may attach to it as evidence.

GIVEN

* * * *

* * * *

[fol. 12] *Instruction No. 3*

The court charges the jury for the state that each and every juror has the right to arrive at his own individual conclusion as to what verdict he desires to return, and after he has reached this conclusion, he has the further right to stick to such conclusion, even though all of his fellow jurymen may desagree with him; yet, the court further tells you that before you reach your final conclusion, that it is your sworn duty to thoroughly consider the law and the evidence in the case and to freely discuss the law and the evidence with your fellow jurymen, and to reach your conclusion after a thouough and consistent search for the truth as revealed by the law and the evidence, and upon this alone arrive at your conclusion and return a verdict accordingly.

GIVEN

* * * *

[fol. 13]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

No. 9330

STATE OF MISSISSIPPI

vs.

WILLIAM SMITH, JR.

VERDICT OF THE JURY—Filed September 25, 1961

WE THE JURY, FIND THE DEFENDANT GUILTY AS CHARGED

[File Endorsement Omitted]

[fol. 14]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

Case No. 9330

STATE OF MISSISSIPPI

vs.

WILLIAM SMITH, JR.

SENTENCE

COMES THE DISTRICT ATTORNEY WHO PROSECUTES FOR AND ON BEHALF OF THE STATE AND DEFENDANT WILLIAM SMITH, JR. IN HIS OWN PROPER PERSON, IN CUSTODY AND BY COUNSEL, BEING CALLED TO ANSWER A CHARGE OF RAPE, BEING ARRAIGNED UPON THE CHARGE IN THE INDICTMENT ENTERED A PLEA OF NOT GUILTY THERETO

THEREUPON CAME A JURY OF GOOD AND LAWFUL MEN, TO-WIT: ALFRED HARDY, JR. AND ELEVEN OTHERS WHO BEING DULY EMPANELLED, SWORN AND CHARGED TO WELL AND TRULY TRY THE ISSUE JOINED AND A TRUE VERDICT RENDER ACCORDING TO THE LAW AND THE EVIDENCE, AFTER HEARING ALL THE EVIDENCE AND ARGUMENTS OF COUNSEL, AND RECEIVING THE INSTRUCTIONS OF THE COURT, RETIRED AND PRESENTLY RETURNED INTO OPEN COURT THE FOLLOWING VERDICT TO-WIT: WE, THE JURY, FIND THE DEFENDANT GUILTY AS CHARGED.

IT IS THEREFORE ORDERED AND ADJUDGED THAT THE DEFENDANT FOR SUCH HIS OFFENSE OF WHICH HE HAS BEEN FOUND GUILTY, BE AND IS HEREBY SENTENCED TO DEATH IN THE MISSISSIPPI STATE GAS CHAMBER FRIDAY, NOVEMBER 3RD, 1961

[fol. 15]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

[Title Omitted]

MOTION TO SET ASIDE VERDICT AND TO GRANT A NEW TRIAL—Filed September 27, 1961

Comes the defendant by his Attorney Jack M. Greaves, in the above styled and numbered cause and moves the court to set aside the verdict of the jury and to grant unto the defendant a new trial and assign the following reasons, to-wit:

1.

That learned judge erred in allowing the alleged confession of the defendant to be admitted as evidence in defendants trial.

2.

The jury found contrary to the law and evidence.

3.

The court erred in allowing the state to introduce various and sundry evidence over the objects of the defendant.

4.

For other causes to be shown at the hearing of this Motion.

JACK M. GREAVES
Jack M. Greaves Att'y for
Defendant

[File Endorsement Omitted]

[fol. 16]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

[Title Omitted]

ORDER OVERRULING MOTION TO SET ASIDE VERDICT AND FOR A NEW TRIAL—September 27, 1961

This cause coming on to be heard on the motion of the defendant, William Smith, Jr, requesting the court to set aside the verdict of the jury and to grant him a new trial, and the court after considering the same is of the opinion that said motion should be over ruled.

It is therefore ordered and adjudged by the court that the above styled and numbered motion be, and the same is hereby over-ruled.

Ordered and adjudged this the 27th day of September, 1961.

LEON F. HENDRICK
Judge

[File Endorsement Omitted]

[fol. 17]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

[Title Omitted]

AFFIDAVIT IN FORMA PAUPERIS—Filed September 27, 1961

STATE OF MISSISSIPPI

MADISON COUNTY

Personally appeared before me the undersigned authority in and for said state and county, William Smith, Jr., who, first being duly sworn on his oath states that he was tried and convicted in the Circuit Court of Madison County, Mississippi on the 25th day of September, 1961 on a charge of rape and was convicted and sentenced to die in the gas chamber on November the 3rd, 1961, from which judgment he is taking an appeal to the Supreme Court of the state of Mississippi. William Smith Jr. makes affidavit that by reason of his proverty he is unable to give bond for the payment of court cost as required by law; that he is also unable to obtain sureties on his appeal bond.

Sworn to and subscribed before me this the 27th day of September, 1961.

L. F. CAMPBELL
Clerk

[File Endorsement Omitted]

[fol. 18]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

No. 9330

STATE OF MISSISSIPPI

vs.

WILLIAM SMITH, JR.

STATEMENT OF EVIDENCE

APPEARANCES:

William L. Waller, District Attorney, Seventh Circuit District, Jackson, Mississippi

Joe R. Fancher, County Attorney, Madison County, Canton, Mississippi
Present and representing the State

Jack M. Greaves, Attorney, Canton, Mississippi
Present and representing the Defendant

RE IT REMEMBERED, that on, to wit, September 25, 1961, the same being of the days of the regular 1961 term of the Circuit Court in and for Madison County, Mississippi, in the Circuit Court room thereof, the above entitled cause came on for hearing before the HONORABLE LEON F. HENDRICK, Judge of the Seven Circuit Court District of the State of Mississippi, with a jury of twelve qualified electors, when and where the following proceedings were had and entered of record:

[fols. 19-22] • • •

[fol. 23] STATE OF MISSISSIPPI'S CASE

MR. BILLY NOBLE

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are sheriff Billy Noble of Madison County?

A. Yes, sir.

Q. You were the duly qualified and acting sheriff of Madison County on the 29th day of July 1961, were you not?

A. Yes, sir.

Q. I will ask you where you were around midnight on Saturday night, July 29th, 1961, sheriff?

A. On Saturday night, the 29th of July, Deputy Sheriff Stone and myself were in beat two around Flora. We stayed over there until approximately 2:30, at which time I returned to my home. We were in and out of the car most of the time and did not hear the call on the radio. When we got home I received this call from my wife who stated that this couple was at Mr. Craft's house on Finney Road and waiting there to see me. I proceeded to the Craft home where I talked to the two victims at which time they disclosed to me what had happened there on the road.

Q. Now, what's Mr. Craft's first name, do you recall?

A. Mr. Ed Craft.

Q. Does he live in Madison County?

A. Yes, sir, Madison County District 1.

Q. All right. How far does he live from— Where does [fol. 24] he live in reference to the court house, north, east, south, or west?

A. He lives north.

Q. All right, sir. Which side of highway 51?

A. He lived on a black top road called Finney Road, to the right hand side of highway 51.

Q. Did you go to the Craft home on Finney Road?

A. Yes, sir.

Q. What did you find when you got there?

A. Found the two victims.

Q. All right. Would you name them, please, sir?

A. Aleece Gober and James Myers.

Q. Would you tell the jury whether or not Aleece Gober is white?

A. She is a white, female.

Q. Now, approximately how old is she?

A. She's approximately fourteen years of age.

Q. And how old is James Myers, if you know?

A. He is approximately seventeen years of age.

Q. What time, approximately, was it that you arrived there?

A. I got there around 2:30.

Q. All right. Did you talk to James Myers and Aleece Gober at that time and place?

A. Yes, sir, I talked to them in the front yard of Mr. Craft's. They stated to me that they had gotten out of the car on this dirt road and were scared to go back to it. I proceeded down to the dirt road headed north where I located the car. I backed out and went back to the house [fol. 25] and put them in the car with me. I went back to the fork of the road at which point they stated to me that when the defendant got out of the car he took the car keys with him and told them he would leave the car keys to the car at the fork of the road. That he left the car, walking south, towards the Finney Road, at which point he broke and ran. We were parked at the intersection of the Finney Road and the dirt road where the attack occurred. I got out of the car and looked on the ground, at which point I located the keys to Myers' car in the fork of the road where they said the defendant was to leave them.

Q. Did you—could you describe by make and model the car that was parked in the road when you got down there?

A. 1959 two-tone blue, Ford automobile.

Q. And your investigation revealed that these two children, Aleece Gober and James Myers, had been riding in this car. Is that correct?

A. Yes, sir.

Q. And they had left it parked. Do you know how they got from the parked car to Mr. Craft's house?

A. They stated to me that they walked across the field. In other words, they got out of the car, they cut across the ditch and through the pasture up to Mr. Craft's house.

Q. Would you describe the appearance to the jury, Sheriff, of Aleece Gober at the time you saw her?

A. She was—had on a blouse and a pair of shorts. The blouse was bloody. She suffered a cut or lacerated hand. There was blood on her shirt where she stated that she had, you know, had placed her hand. Also on the shirt of [fol. 26] the Myers boy. Had a piece of cloth wrapped around the hand to stop the bleeding.

Q. Did you notice anything in particular about the Myers boy?

A. He suffered a, in other words, a knife mark on his throat.

Q. At that point what crime, if any, were you commencing an investigation of?

A. At that time I was with the assault.

Q. Assault. Are you talking about rape?

A. Yes, sir. She stated to me at the fork of the road . . . .

BY THE COURT:

I expect you had better not go into details about what so and so stated, Mr. Waller.

BY MR. WALLER: (continuing)

Q. What did you do after you recovered the car keys, sheriff?

A. I called on the radio for additional help, for the Canton police department to send Mr. Hill with his police dog to the scene. I also radioed the Hinds County sheriff's office to have them send the bloodhound up. Blocked the roads off at that point. And when Patrolman Hill arrived with his dog I placed him on the scent at the road where the car keys were left. He took the track and headed west and crossed the cotton field in direction of the sawmill quarters. I proceeded to the hospital with the Gober girl and the Myers boy, at which point I radioed to have a doctor there.

[fol. 27] Q. Did you take the two children to the hospital?

A. Yes, sir.

Q. At Canton?

A. Yes, sir.

Q. Do you know what doctor saw them?

A. Dr. C. H. Haywood.

Q. Saw them at the hospital?

A. At the hospital, yes, sir.

Q. Did he examine them immediately after you arrived there, is that correct?

A. Yes, sir, and also with the consent of the family.

Q. Did you later through your investigation examine the scene where this assault took place?

A. Yes, sir.

Q. Where was the scene located in reference to Mr. Craft's house and where the car was parked?

A. It's located north on the dirt road where the car was parked north of the house of Mr. Craft.

Q. Now, that dirt road runs north and south, does it not?

A. Yes, sir.

Q. Does it turn at any point north of where the car was parked?

A. The road runs north and south to the point where the car was parked where the scene of the crime was committed. Then the road turns and runs west—east and west—at that point and intersects into highway 51.

Q. Comes back to highway 51?

[fol. 28] A. Yes, sir.

Q. Describe the land surface area where this assault took place, sheriff.

BY MR. GREAVES:

I object to it unless somebody showed him, one of these, the girl or the boy showed him where it was, so it would be the exact spot.

BY THE COURT:

I sustain the objection to that.

BY MR. WALLER: (continuing)

Q. Did you take the Myers boy and the Gober girl with you when you went to the scene?

A. Took the Myers boy.

Q. Did he show you where it took place?

A. Yes.

Q. Did you find evidence there to corroborate the fact that something had happened there?

A. The Investigator Charley Snodgrass recovered the victim's pants.

Q. Was that her under pants?

A. Yes, sir.

Q. Were you present when those were recovered?

A. Yes, sir.

Q. And what was the ground area, what was there, grass, trees, or what?

A. A corn field.

Q. It was a corn field. Was it row corn? Was it rows made up?

A. Yes, sir.

[fol. 29] Q. Was the corn growing at that time, I mean, was it up high?

A. Yes, sir.

Q. All right. Was this in what direction from the dirt road, north or west or east or south?

A. It's located east.

Q. Approximately how far from the curve we talked about where the road turns west and goes back into highway 51.

A. It's just opposite the curve.

Q. All right. How many feet approximately from the roadway itself?

A. I would say approximately thirty or forty feet.

Q. Thirty or forty feet from the road?

A. Yes, sir.

Q. Now, did you accompany Officer Snodgrass on further investigation of this incident?

A. Yes, sir.

Q. I will ask you whether or not the defendant in this case, William Smith, Jr., sitting here in the court room, was arrested?

A. Yes, sir.

Q. I ask you whether or not you discussed this matter with him?

A. We talked to him that evening at the highway patrol headquarters in Jackson.

Q. Were you present at any time when he made any admission in your presence about the incident?

A. Yes, sir.

[fol. 30] Q. I will ask you to tell the jury what he said about it to you or in your presence, whether or not he did it?

A. He stated to me that . . . .

BY MR. GREAVES:

Let the jury retire, Judge, on that.

BY THE COURT:

All right. The jury may go to their room.

BY MR. WALLER:

Judge, could I have a word with you before that?

(After conference of the Court and the attorneys for both sides, the jury did not leave the court room.)

BY MR. WALLER: (continuing)

Q. What day was the defendant arrested, Sheriff Noble?

A. He was arrested on the morning of July 30th at his home.

Q. Now, in connection with his home, I will ask you whether or not you caused to be issued any particular type of legal document to go to his house or any permit?

A. Yes, sir, we issued a search warrant to search his house to recover the wallet taken from the person of James Myers.

Q. Did you recover anything that was the property of either one of these two people?

A. Yes, sir, we recovered the wrist watch taken from Myers. We recovered a knife that Smith claimed he used in the attack out of the wall where he said he had placed it. We recovered the clothing that he had on at the time

of the attack, minus a shirt he claimed he had but we never did recover it.

[fol. 31] Q. Did your investigation disclose how Smith was dressed that night?

A. Yes, sir.

Q. What did he have on?

A. He stated he had on a pair of khaki pants.

Q. All right. Did you recover those pants?

A. Yes, sir.

Q. Are they in the custody of your office at the present time?

A. Yes, sir.

Q. Did you recover—you testified, of course, that you recovered the knife?

A. Yes, sir.

Q. Is it in your custody at this time?

A. Yes, sir.

Q. And you testified you recovered a watch, the property of James Myers?

A. Yes, sir.

Q. What kind of a watch was that?

A. It's a Timex, 100, wrist watch, with a silver, stretch-type band.

Q. Would you tell the jury, Sheriff, where you recovered the knife within the house?

A. The knife was recovered in the middle bedroom out of the wall, had a hole in it between two partitions that he claimed that's where he placed the knife and also the wallet. We never did recover the wallet.

Q. You never recovered the wallet?

[fol. 32] A. No, sir.

Q. But you did find the knife in the wall where the defendant said it was?

A. Yes, sir.

Q. Did you have to remove a board or how did you get it?

A. Yes, sir, we had to take out part of a partition.

Q. Took out part of the wall?

A. Yes, sir.

Q. Did you discuss the findings with Dr. Haywood in the course of your investigation?

A. Yes, sir, he made his initial investigation or examination the morning of July the 30th. I requested of him a report as to his findings of which he mailed a copy to my office.

Q. Now, based upon all of the investigation that you conducted, the physical evidence which you recovered, I will ask you to tell this jury whether or not you discovered that a crime had been committed at that time and place?

A. Yes, sir.

Q. Did you?

A. Yes, sir.

Q. What crime was it?

A. That the victim, Aleece Gober, had been raped and the Myers boy had been robbed.

Q. I will ask you in particular reference to the corn field you spoke of before, opposite the curve in the dirt road that runs parallel to highway 51, I will ask you what county that is located in?

[fol. 33] A. It's in Beat 1, County of Madison, State of Mississippi.

Q. And is that the spot and the place where this assault took place according to your investigation?

A. Yes, sir.

Q. Sheriff, you spoke of the under pants which was recovered in your presence in the corn field shortly after you started your investigation?

A. Yes, sir.

Q. Did you determine who they belonged to?

A. Yes, sir.

Q. Who?

A. Aleece Gober.

Q. All right. Do you have those in your possession and custody at this time?

A. Yes, sir.

BY MR. WALLER:

The State would tender the witness at this time with the remark that we will call Sheriff Noble later, Your Honor.

BY THE COURT:

All right.

CROSS EXAMINATION

BY MR. GREAVES:

Q. Mr. Sheriff, when you went to this man's house how did you happen to find the knife?

A. State the question again, please, sir.

Q. I asked you, when you got the writ to search Smith's house, how did you find the knife?

A. We had to tear the partition out of the wall. In [fol. 34] other words, it had a hole in the wall between the partition, it had a partition in between it. He stated that he had dropped the knife in the hole in the wall.

Q. What pressure did you put upon him to get him to show you where the knife was?

A. None.

Q. All you did, walked in and told him you were looking for a knife and a wallet and he just meekly and frankly turned it over to you?

A. No, sir, Mr. Jack. That was after he had confessed to the crime at the highway patrol headquarters. We asked him where the property was and he stated that the knife and the wallet and the watch were at his house, along with his clothes.. He stated further that the under pants and the under shirt that he had on at that time were the same that he had on at the scene.

Q. That's the way that you found it out?

A. Yes, sir, he told us that before we went to his house.

Q. That's all.

BY MR. WALLER:

It's agreeable now, as I understand the procedure, Your Honor, for the Sheriff to remain in the court room He will be a witness later on.

BY MR. GREAVES:

That will be agreeable.

BY THE COURT:

All right.

[fol. 35] ERNEST CRAFT

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are Ernest Craft?
A. Yes, sir.
Q. Do you live on the Finney Road, north of Canton, in Madison County?
A. Yes, sir.
Q. You have a farm up there, do you not, Mr. Craft?
A. Yes, sir.
Q. You live there on the farm in your home. Is that right?
A. Yes, sir.
Q. I ask you whether or not you were at home, along with your family, on Saturday night, July 29th, 1961?
A. Yes, sir, I was.
Q. I ask you whether or not any one came to your house after midnight that night?
A. Yes, sir.
Q. It would have been what date then?
A. Sunday morning.
Q. Then it actually would have been July the 30th?
A. Yes, sir.
Q. Do you now know a young man named James Myers?
A. Yes, sir.
Q. Did you prior to that night?
[fol. 36] A. No, sir.
Q. Do you now know a young lady named Aleece Gober?
A. Yes, sir.
Q. Did you know her prior to that night?
A. No, sir.
Q. I ask you whether or not, sir, on the night that we spoke of if these two young people came to your home?
A. Yes, sir.

Q. Approximately what time?
A. Around 2 o'clock.
Q. Were you asleep or awake at that time?
A. Asleep.
Q. Did they wake you up?
A. Yes, sir.
Q. Then what happened?
A. Well, they were hollering out at the road for help and . . .
Q. I can't hear you, sir.
A. They were hollering out at the road for help and I went to the front door and told them to come on up to the steps and I turned the light on to see who it was and saw that they were hurt. I asked them to come in. I called the sheriff and then I asked the boy if he wanted to call the doctor. He said "No" and said he wanted to call his mother. They did.
Q. As to the little girl, I want to ask you whether or not you noticed anything on her clothes at that time?
A. Well, she had . . . .

BY MR. GREAVES:

I object to his leading question, Your Honor.

[fol. 37] BY THE COURT:

I sustain the objection, on the ground it is leading.

BY MR. WALLER: (continuing)

Q. Mr. Craft, what color clothes, if you can remember, did the little girl have on?
A. She had on a white blouse and a dark skirt or shorts. I really don't know whether it was shorts or a skirt. It was dark.
Q. You asked them if they wanted you to call a doctor?
A. I did.
Q. Why did you ask them that?
A. Well, they had—she had blood on her blouse and her hand was cut.
Q. Did you notice—did you look at the hand yourself to tell more about the cut?

A. No, sir, she had it wrapped up in a rag, white cheesecloth.

Q. Did you see the blood?

A. Yes, sir.

Q. Did you notice anything else about her?

A. Well, she had dirt on her blouse and it was all rumpled up.

Q. You said they were out in the road hollering for help. Finney Road, what direction does it run?

A. It runs east and west.

Q. Is your house on the north or the south side of Finney Road?

[fol. 38] A. North.

Q. And how far is your house, the front door of your house from the Finney Road?

A. Probably seventy five feet.

Q. When you say they were in the road, what road do you mean?

A. In the Finney Road.

Q. All right. Is there a road that intersects with Finney Road anywhere near to your house?

A. A road that runs north and south about seven or eight hundred feet from my house, east of my house.

Q. East of your house. Is that a thru intersection or . . . .

A. It runs—comes on back out into 51.

Q. Does the road run south of Finney Road—when this dirt road hits Finney Road, does it go on across or does it end at Finney Road?

A. It ends at Finney Road.

Q. It ends at Finney Road?

A. Yes, sir.

Q. It runs north how far?

A. About a mile.

Q. Then what direction does it take?

A. West.

Q. All right. Where does it go then?

A. It goes down to 51.

Q. A the point where it turns west, do you know what the terrain there—what's growing on the land, if anything, on the east side of the road?

[fol. 39] A. Yes sir, there's a corn field on the east.

Q. Did you leave your house with these children that morning or not?

A. No.

Q. All right. Do you know whether or not Sheriff Noble came to talk to them that night?

A. Yes, sir, he did.

Q. Did you call the doctor or did Sheriff Noble call the doctor or do you know?

A. I don't know. I didn't.

Q. I believe that's all.

BY MR. GREAVES:

Stand aside.

BY THE COURT:

All right. Who do you want, Mr. Waller?

MR. JAMES MYERS

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. Talk out loud enough so we all can hear you.

Q. You are James Myers?

A. Yes, sir.

Q. M-y-e-r-s (spelling)

A. Yes, sir.

Q. Where do you go to school, James?

A. Canton High School.

Q. Canton High School?

[fol. 40] A. Yes, sir.

Q. What grade are you in?

A. 10th.

Q. You just atarted the 10th grade?

A. Yes, sir.

Q. How old are you?

A. 17.

Q. When were you seventeen?
A. January the 12th.
Q. Of this year?
A. Yes, sir.
Q. What's your father's name?
A. Jeff C. Myers.
Q. Do you live with your father and mother?
A. Yes, sir.
Q. Were you living with them back in July?
A. Yes, sir.
Q. What kind of car does your father own?
A. Sir?
Q. What kind of car does your father own?
A. '59 Ford.
Q. What color?
A. Blue and white.
Q. Do you know Aleece Gober?
A. Yes, sir.
Q. How long have you known her?
A. About two years.
Q. Do you all go to the same school together?
A. Yes, sir.
[fol. 41] Q. You live close together?
A. Yes, sir.
Q. I direct your attention to Saturday night, July 29th, 1961, and ask you whether or not you were with Aleece Gober on that night?
A. Yes, sir, I was.
Q. What time did you pick her up?
A. About 7 o'clock.
Q. 7 o'clock.
A. Yes, sir.
Q. Where did you all go then?
A. My mother, she was in the hospital. When I went and picked Aleece up we went down to see my mother in the hospital.
Q. Here in Canton?
A. Yes, sir.
Q. Were you driving your daddy's car?
A. Yes, sir.

Q. Same car that we were talking about?
A. Yes, sir.
Q. About how long did you stay in the hospital?
A. About an hour.
Q. What did you do then?
A. We left the hospital and we went back to our house and then when we left our house. We stayed at our house about thirty or forty five minutes. When we left our house we went to the N & W root beer stand.

BY THE COURT:

Speak a little louder, James.

A. Yes, sir.

[fol. 42] BY MR. WALLER:

Q. You went to the N. & W root beer stand?
A. Yes, sir.
Q. Did you stay there for awhile?
A. Yes, sir.
Q. Was there anybody else in the car with you at that time other than Aleece?
A. No, sir, but we talked to another boy and girl out there.
Q. Out at the root beer stand?
A. Yes, sir.
Q. Then what did you do when you left there?
A. We left the root beer stand, then we rode around uptown for a little while, then we went back out towards Finney Road out there.
Q. Do you now know where Ernest Craft lives?
A. Yes, sir.
Q. Did you pass his house on the way out there?
A. Yes, sir.
Q. What did you do after you passed his house—did you keep on the Finney Road or did you turn off?
A. No, sir, we turned off on a little road there and we parked there.
Q. All right. Did you turn north or south?
A. North.
Q. How far up the dirt road did you go before you parked?

A. About a quarter of a mile.

Q. Did you park on the—you were headed north, were [fol. 43] you not, in your daddy's car?

A. Yes, sir.

Q. Did you park on the left or the right side of the road?

A. Right.

Q. Right. That would be on the east side of the road?

A. Yes, sir.

Q. Did any cars pass while you were stopped there?

A. Yes, sir.

Q. Were they passing on the west of your car or the east side of your car?

A. West.

Q. Would you describe to the jury the road banks of that road, how they are laid out and what grows on them, if anything.

A. Well, there was a fence on the left hand side of the road and trees growed up along. I think that was Mr. Craft's land. And on the right it was bushes and grass and all like that.

Q. Now, after you stopped there, were you doing anything?

A. (No answer)

Q. Was there any noise in the car or not?

A. Yes, sir, we had the radio going. We turned the radio on. Just sat there talking and listening to the radio.

Q. You had the radio on. Now, you drove out there, of course, didn't you?

[fol. 44] A. Yes, sir.

Q. Were you or not, after you stopped, did you remain under the driver's seat?

A. No, sir, I got on the right hand side and Aleece got on the left.

Q. Were you sitting in the middle of the seat or were you on the side or how were you seated on the front seat right side?

A. I was on the side—on the right side, leaning up against the door. She was sitting in the middle of the seat.

Q. All right. Where was Aleece?

A. She was in the middle of the seat.

Q. You had the radio on?

A. Yes, sir.

Q. Then what happened?

A. Then I told Aleece, I said, "Aleece it's about time for us to go home."

Q. Did you smell anything about that time or not?

A. Yes, sir, after I said that I said, "Aleece, don't you smell whiskey?" And she said, "yes." I said, "I smell it." She said, "I do, too." About that time we heard something in the bushes over there. I said, "Aleece, didn't you hear something over there?" She said, "No, I didn't." So I didn't pay it no attention at that time. I just thought it was a dog or something over there.

Q. Then what happened.

A. About that time a negro came up to the car.

Q. What happened? Just tell the jury what happened.

[fol. 45] A. When he came up to the car?

Q. Which side?

A. To the right side.

Q. Is that the side you were seated on?

A. Yes, sir.

Q. Did he open the door or did he say anything or just what happened?

A. I was leaning up against the door and he run his hand through the window and put his hand on my mouth and then he opened the door and then he stuck a knife across there and told me to empty my pockets and give him everything I had.

Q. Did you do that?

A. Yes, sir.

Q. What did you give him?

A. I gave him my watch and my billfold. I didn't have no change. I just gave him my watch and billfold.

Q. What did he say to you, if anything?

A. Sir?

Q. Other than to give him all your money?

A. That's all he said at that moment.

Q. What kind of watch did you have?

A. Timex.

Q. What color?
A. Silver. Had a silver band on it.
Q. What kind of a band did it have on it?
A. Silver band.
Q. Did it stretch like this or not?
A. Yes, sir.
Q. Did you give it to him?
[fol. 46] A. Yes, sir.
Q. You gave him your wallet?
A. Yes, sir.
Q. What did he say then?
A. Well, he told Aleece to drive then. And she tried to drive but she couldn't. She can't drive a car and I tried to tell him that she couldn't drive a car and he said, "Shut up. Don't get smart." And I told him she couldn't drive and then he made me drive it.
Q. Was he in the car all the time?
A. Sir?
Q. Was he in the car all the time?
A. Yes, sir.
Q. And what was he doing then, when he told you to drive the car?
A. Well, he still had the knife at my throat. When he told me to drive the car, well, I switched over and he grabbed Aleece before I could get up. He put the knife to her throat and her arm around behind and I switched over. Then I got under the steering wheel and he told me to drive on up the road and I told him, "I am going to turn my lights on because I can't see." And I couldn't see and I was going all over the road and I had to drive slow because I couldn't see. And he reached over and he stomped my foot and we was going all over the road because I couldn't see where I was going. We were going so fast.
Q. Do you know about how far you went up the Finney Road, James?
A. About a mile—a mile and a half.
[fol. 47] Q. I am up the dirt road, pardon me. You were on the dirt road headed north. How far up that road did you go?

BY MR. GREAVES:

I object to him putting words in his mouth, if the Court please.

BY THE COURT:

I think that's all right, Mr. Greaves. He just asked him how far up that road. I overrule the objection to that particular question. Don't lead him or suggest to him, Mr. Waller. That's what Mr. Greaves is objecting to but I think that question is all right. I overrule the objection.

BY MR. WALLER: (continuing)

Q. Let's go back to the time you got under the wheel and you started the car. What did you do then?

A. He told me to crank the car up and drive on up the road.

Q. When you say up the road, what direction were you going then?

A. North.

Q. All right. How far north did you go?

A. About a mile.

Q. All right. Then what happened?

A. Then he told us to turn off on a little road right there—there's a silver gate there. I don't know who owns the land. We turned off right there. And then he told us to get out. So we got out.

Q. Wait just a minute. This dirt road that you went north on about a mile, does it turn in any direction?

A. Yes, sir, it turns back left.

[fol. 48] Q. Towards what?

A. 51 highway. It goes back into 51.

Q. Where in reference to that curve did you stop?

A. Right in the middle of the curve, we turned right.

Q. Right in the middle of the curve?

A. Yes, sir.

Q. Did you stop on the dirt road or did you pull off?

A. We pulled off the dirt road.

Q. All right. How far off of the dirt road did you pull?

A. It was about the length of the car.

Q. Length of the car. What was in front of your car when you stopped, if anything?

A. There was a big, silver looking gate.

Q. A gate?

A. Yes, sir.

Q. A pasture gate?

A. Yes, sir.

Q. All right. What did you do then?

A. Well, he told us to get out of the car then. We got out and then he told us to cross a barbed wire fence and go into that corn field.

Q. What did he say to you at any time prior to that, if he didn't do what he told you to?

BY MR. GREAVES:

I object to that.

BY THE COURT:

[fol. 49] I sustain the objection. That's leading and suggestive, Mr. Waller.

BY MR. WALLER: (continuing)

Q. As you all proceeded up the dirt road there, you were driving without your lights, as you testified?

A. Yes, sir.

Q. What, if anything, did the negro man say to you while you were driving along?

A. He didn't say nothing then.

Q. Did he tell you where to stop or did you pick that spot?

A. No, sir, he told me to turn off when we got there.

Q. When you stopped what did he say, if anything?

A. He told us to get out of the car.

Q. Where was he in reference to you—did he have hold of you or not or what was he doing?

A. I was under the steering wheel and he had hold of Aleece. He was on the right hand side. Aleece was in the middle.

Q. You spoke of the knife. Did he still have the knife or not?

A. Yes, sir, he had the knife up at Aleece's throat.

Q. He told you to get out, is that what you are saying?
A. Yes, sir.
Q. Did you get out?
[fol. 50] A. Yes, sir.
Q. Then what did you do?
A. Well, after he told us to get out, he told us to cross the barbed wire fence and when I went to cross it I fell or something. I twisted my foot. And he told us to go on out in the corn field.
Q. Where is the corn field located in reference to the dirt road?
A. It's right beside it.
Q. What side of the road is it on?
A. Right.
Q. Was that east or west, north or south?
A. East.
Q. East side of the road. About how far did you go in the corn patch?
A. About two hundred feet, something like that.
Q. In the corn patch and the corn patch is on the east side of this dirt road?
A. Yes, sir.
Q. All right. Now, would you tell the jury now whether you were in front of the negro man or behind him?
A. I was in front of him.
Q. Where was Aleece?
A. She was in between us.
Q. Did he have hold of either one of you?
A. Yes, sir. He had hold of Aleece and had the knife up to her throat.
Q. Did he say anything at that time?
[fol. 51] A. No, sir.
Q. Then what happened?
A. Then he told us to go on out there in the corn field. We went on out there. And he told me to lay down and put my face in the dirt and I laid down in the dirt, put my face down.
Q. You laid down in the dirt face down?
A. Yes, sir.
Q. Then what happened.

A. Then there was some talking going on or mumbling one. I couldn't understand what they were saying.

Q. Where was he and Aleece in reference to you? You were laying face down in the dirt and where they?

A. They were standing up at my feet.

(Whereupon Court recessed at 11:50 A.M., until 12:50 P.M., September 25, 1961.)

(Pursuant to the foregoing, Court reconvened at 12:50 P.M., September 25, 1961, when the following proceedings were had and done.)

(JAMES MYERS STILL ON THE WITNESS STAND ON DIRECT EXAMINATION)

BY MR. WALLER:

Q. James, we were up to the point where you were laying on your face in the corn field and they were standing at your feet. Just tell the jury in your own words what happened.

A. There was some mumbling going on and I couldn't understand what they were saying. And I heard him tell her to pull her pants off. When he told her that she ran over there and she grabbed me and I started to get up. He told me if I got up he would cut my throat. He [fol. 52] told me if I got up he would cut my throat so I didn't get up. And then he told her to pull her pants off. And then she pulled her pants off. Sh told him that she wasn't going to pull them off. For him to go ahead and kill her that she wouldn't pull them off. And he said, "If you don't, I will." So she went ahead and pulled them off. Then they laid down on the ground beside me.

Q. Did you have you face toward them or away from them?

A. Away from them.

Q. Were they laying beside you or how?

A. They were laying down beside me.

Q. Could you touch them or not?

A. Yes, sir, I could reach out with my arm and touch them.

Q. Then what happened?

A. Then he laid down on top of her. I felt something kicking down there at my foot. I turned around and looked. It was his foot. He was up on top of her.

Q. Did he say anything.

A. No, sir.

Q. How was she laying on the ground?

A. She was laying down flat on her back.

Q. How was he laying?

A. He was up on top of her.

Q. Do you know where the knife was at that time?

A. No, sir, I don't but I think, I'm not sure. He said something to her. I couldn't understand what he said. And she said, "No, you are not." And that's when he [fol. 53] cut her hand.

Q. Would you repeat that again—he said something to her?

A. Yes, sir.

Q. And what did she say?

A. She said, "No, you're not." That's when he cut her hand, when he cut her fingers.

Q. Cut her hand?

A. Yes, sir.

Q. Did he say anything else at that time?

A. Yes, sir, he told her he was going to fuck her until she couldn't stand it no more. And about that time he told us to get up. And then he told us to go get back in the car. So went and got back in the car. And he told us to put our heads down on the floorboard. So we put our heads down on the floorboard and then he asked me did I have a pistol. And I told him, "No, I didn't." He called me a liar. He said I was lying, I did have one. So he searched the car and he asked Aleece did she have one. And she told him, "No" she didn't. He looked in her purse anyway. Then we left. I can't tell you where we went, because we had our heads on the floorboard. We couldn't see where we were going.

Q. Let's go back to the corn patch. You say he was on top of her?

A. Yes, sir.

Q. Was he moving or not?

A. Yes, sir.

Q. Could you tell what else he was doing?

A. No, sir.

[fol. 54] Q. What was Aleece doing?

A. She was grunting and screaming, hollering, and begging him not to and he was telling her to shut up.

Q. How long were they in that position?

A. About thirty minutes.

Q. You got back in the car and you say he made you lay down on the floorboard?

A. No, sir, he made us put our heads down on the floorboard.

Q. In the front seat?

A. Yes, sir.

Q. Then what happened?

A. He backed out and we went somewhere. We went about half a mile, I guess, because he turned around and carried us back where we were when he jumped. Then he told us that he was going to leave us there. When he got out he told us we better not get up, that he would be watching us. There was some gravel or something there. You could hear him walking and then all of a sudden you could hear him take off running. And he said he would leave the keys in the fork of the road there.

Q. He told you he would leave the keys in the fork of the road?

A. Yes, sir.

Q. After he left, what did you all do?

A. I told Aleece, I told her we had better get out of there. So we got out and went across Mr. Craft's field and went up to his house and woke them up and used the telephone, and he called Mr. Noble.

Q. Where did you go when you left Mr. Craft's house?

[fol. 55] A. We was in the car with Mr. Noble.

Q. Where did you go then?

A. We went to the hospital. Then from the hospital he carried me on down to the police station.

Q. Your witness.

CROSS EXAMINATION

BY MR. GREAVES:

Q. What time of night did this occurrence take place?
A. Would you repeat that, please?
Q. About what time of night was this that you got in this trouble?
A. About 12.
Q. About 12 o'clock. Wasn't that a little late for you to be out with a young lady?
A. Yes, it was.
Q. You all were parked in a lover's lane, weren't you?
A. Sir?
Q. You were parked in a kinda lover's lane—had your car parked, didn't you?
A. Yes, sir.
Q. It was around 12 o'clock at night?
A. Yes, sir.
Q. You were out there. I believe that's all I want to ask him.

BY MR. WALLER:

Stand aside.

[fol. 56] BY MR. WALLER:

The State calls Aleece Gober.

BY THE COURT:

This young lady has been called, Aleece Gober. I am going to do that which I have authority to do, that is, to clear the court room while she is testifying. I want everybody to get out of the court room except the officers. And if there any any newspaper people in here, they can stay. The witness and the young lady's family can stay. The rest of you can go outside of the court room. If this boy's close relatives are here I will let them stay. I don't know whether he is married or not. His wife or his mother or both may stay in the court room.

MISS ALEECE GOBER

after having been first duly sworn was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are Aleece Gober?
A. Yes, sir.
Q. How old are you, Aleece?
A. 14.
Q. When were you fourteen?
A. January 15th.
Q. You live with your mother and father here in Canton?
A. Yes, sir.
Q. What grade are you in?
[fol. 57] A. The 9th.
Q. The ninth grade. You go to school here?
A. Yes, sir.
Q. Do you understand the oath you just took to tell the truth? Do you understand that all right?
A. Yes, sir.
Q. Do you know James Myers?
A. Yes, I do.
Q. How long have you known him?
A. About two years.
Q. Directing your attention to Saturday night, July 29th of this year, and ask you whether or not you were with James that night?
A. Yes, sir, I was.
Q. Where were you all at about 11 o'clock that night?
A. We were on a dirt road that turned off of Finney Road.
Q. Were you in a car?
A. Yes, sir.
Q. Was the car moving or stopped?
A. Stopped.
Q. Do you know whether or not this was a public road you were parked on?

A. (No answer)
Q. Did cars come by while you all were stopped there?
A. Yes, sir.
Q. Did they pass by the car you were in?
A. Yes, sir.
[fol. 58] Q. Do you know whose car you were in?
A. Mr. Myers'
Q. James' father's car?
A. Yes, sir.
Q. Do you know what kind of car it was, what make?
A. Yes, sir, '59 Ford.
Q. Ford. At the time you all stopped there and after you stopped where were you seated in the car?
A. On the driver's side.
Q. And where was James seated?
A. On the right hand side.
Q. Can you tell us what you all were doing—was there any noise in the car or anything?
A. Yes, sir, we were playing the radio.
Q. Playing the radio. What side of the—you say James was seated on the right hand side of the car?
A. Yes, sir.
Q. Would you tell the jury how he was seated—was he seated straight in the seat or how?
A. Well, sir, he was sorta up against the door.
Q. Leaning up against the door?
A. Yes, sir.
Q. You all were playing the radio?
A. Yes, sir.
Q. Did anything happen then that you all discussed between you?
A. I don't understand the question.
Q. Did anything happen while you all were parked there?
[fol. 59] A. Yes, sir.
Q. What's the first thing that happened?
A. Well, first, we smelled whiskey.
Q. You smelled whiskey?
A. Yes, sir, and then James heard something but didn't pay too much attention to it.

Q. Then what happened?

A. Then this colored man opened the door and put a knife to James' throat.

BY THE COURT:

Aleece, if you will talk just a little bit louder so that all of us can hear. Just be at ease and just talk a little bit louder.

BY MR. WALLER:

Q. You say he opened the door and put a knife to James' throat. Is that what you said?

A. Yes, sir.

Q. Which door did he open?

A. The right.

Q. Did he say anything?

A. Yes, sir, he said something but I don't remember his exact words.

Q. Then what happened?

A. Well, then James started to hit him and I screamed and I got out of the car. He told me if I didn't come back he would cut James' throat so I came back and got in the car and then he told me to drive and I can't drive a straight shift. And I tried but I couldn't. So James saw that I couldn't convince him and then he made me [fol. 60] change places with James.

BY MR. GREAVES:

Judge, I can't hear what she's saying. I don't know whether the jury can.

BY THE COURT:

Aleece, Mr. Greaves has got to hear you and that gentleman who has his hand up to his ear has got to hear you. If you will go just a little bit slower and I know that it is hard for you to talk but you will just have to talk so we can hear you. Talk just a little bit louder. I put everybody out of the court room now. I don't want you to be embarrassed. Just talk to us and try to keep your voice up. All right.

BY MR. WALLER:

Q. Would you go back there and tell me—you said he made you all change places on the seat?

A. Yes, sir.

Q. Did you get out of the car or did you just climb over James?

A. James went over me.

Q. James went over you?

A. Yes, sir.

Q. What did the negro man do then?

A. He put the knife at my throat.

Q. He put the knife at your throat?

A. Yes, sir.

Q. Anything else?

A. No, sir, then he made James drive.

Q. He made James drive?

A. Yes, sir.

[fol. 61] Q. Then what happened?

A. And then James—he told James to take everything out of his pockets, that he was going to take all of his money. James didn't have any. And so he took everything out of his pocket and he gave the negro his watch and then he told James to drive and then James drove. He directed James where to go.

Q. When James took everything out of his pocket, I will ask you what was said to James by the negro, if any thing?

A. James told him that he didn't have any money and the negro told him to shut up and not to get smart with him.

Q. Then you all drove—did you turn around or go forward or what?

A. We went forward.

Q. Do you know how far you went?

A. Yes, sir, I would say about a mile and a half or two miles.

Q. Then what happened?

A. Then there's a curve in the road. There's a silver gate right inside the curve. We pulled over to the curve and he made us get out.

Q. Now, wait just a minute. You say there is a silver gate right inside the curve?

A. Yes, sir.

Q. You pulled over and he made you get out at the gate. Is that right?

A. Yes, sir.

Q. All right. At the time you all were driving what [fol. 62] was the negro doing, if anything?

A. (No answer)

Q. Where did he have his hands?

A. He had one of them on the seat and one of them knife around my neck.

Q. When you all got up to the gate and parked, then what happened?

A. Then he made us get out of the car.

Q. Then what did you do?

A. Then we crossed over this barbed wire fence.

Q. What was on the other side of the barbed wire fence?

A. A corn field.

Q. Did you go—then where did you go?

A. We went into the corn field.

Q. How far into the corn field did you go?

A. About two hundred feet.

Q. Then what happened?

A. Then he made James lie down on the ground, face toward the ground, and he made me lay down at first and I got back up and then he told me to take off my shorts and I told him I wouldn't do it and then he started to take them off and then I took them off.

Q. What did the negro have in his hand at that time?

A. A knife.

Q. Did you take your shorts off?

A. Yes, sir.

Q. Tell the jury at that time, Aleece, how you you [fol. 63] were dressed.

(No answer)

Q. What did you have on?

A. I had on black shorts and a white blouse.

Q. All right. Did you have on any under garments?

A. Yes, sir.

Q. What?

A. I had on my panties.
Q. What else?
A. And a brassiere.
Q. Did you take off your under pants when you took your shorts off or not?
A. Yes, sir.
Q. Then what happened?
A. Then he made me lay down.
Q. Was James laying down at this time?
A. Yes, sir.
Q. Then what happened?
A. Then he got down there, too, and James told him to get up and he told James he better lay back down.
Q. Then what did he do?
A. (No answer)
Q. Did he get on top of you?
A. Yes, sir.

BY MR. GREAVES:

I object to him asking leading questions.

BY THE COURT:

Mr. Waller, don't lead her any more than you have to. [fol. 64] I will let you lead her just a little bit under the circumstances and her age but don't do it any more than you have to.

BY MR. WALLER: (continuing)

Q. Aleece, you were lying on the ground. Were you on your back or your face?
A. My back.
Q. Where was James in reference to you at that time?
A. He was beside me.
Q. And you didn't have on any clothes from your waist down. Is that right?
A. No, sir.
Q. Then what happened next?
A. Then he made me get up and I put back on my shorts.
Q. Before you got up, did anything else happen?
A. Well, I tried to grab the knife and I cut my left hand.

Q. Which hand did you cut?
A. My left hand.
Q. All right. Would you stand up, please. Hold up your hand and palm it out so the jury can see it.
A. (Witness showed her hand to the jury.)
Q. I want you take the index finder of your right hand and point to where it cut.
A. (Witness pointed)
Q. Did it bleed?
A. Yes, sir.
Q. All right. I want you to—you got down one time [fol. 65] and he made you get back up, and take your pants—your shorts and your under pants off.
A. Yes, sir.
Q. Then he made you get back on the ground.
A. Yes, sir.
Q. Correct?
A. Yes, sir.
Q. You know I talked to you the other day and I want you to tell me what happened then, if you will.
A. After he made me lie down?
Q. Yes.
A. Well, then, he got on top of me.
Q. He got on top of you?
A. Yes, sir.
Q. Is that when you cut your hand?
A. Yes, sir.
Q. Is that the same knife he was holding to your throat?
A. Yes, sir.
Q. All right. Then what did he do when he got on top of you?
A. (No answer)
Q. Did he have his clothes on?
A. Yes, sir.
Q. Did he takes his pants off?
A. No, sir.
Q. Did he unfasten his pants?
A. Yes, sir.
Q. In the front?

[fol. 66] BY MR. GREAVES:

Judge, I still object to him leading.

BY THE COURT:

Ordinarily you would be right, Mr. Greaves.

BY MR. GREAVES:

What?

BY THE COURT:

I say, ordinarily you would be right but I am going to permit just a little leading.

BY MR. GREAVES:

Note that the Defendant objected to the leading questions.

BY THE COURT:

All right.

BY MR. WALLER: (continuing)

Q. While he was on top of you, Aleece, did he do anything to you?
A. Yes, sir.
Q. Did he put anything in you?
A. Yes, sir.
Q. Where?
A. (Witness crying)
Q. Do you understand the term rape?
A. Yes, sir.
Q. Do you know what it means?
A. Yes, sir.
Q. Did he rape you?
A. Yes, sir.

BY THE COURT:

[fol. 67] Now, Mr. Waller, I sustain Mr. Greaves' objection to that because that's a conclusion. I am going to let you do a little leading.

BY MR. GREAVES:

I object to him putting words in her mouth again.

BY THE COURT:

I sustain the objection to that. That's a conclusion. I will let you bring out the facts. Aleece, just go ahead, just like you were telling it. Your mother—I mean, your people are here. Don't be any more embarrassed than you have to. And just tell and answer Mr. Waller's question. Just go ahead and answer it.

BY MR. WALLER: (continuing)

Q. Do you know—do you understand a man's sex organs, Aleece?
A. Yes, sir.
Q. Do you understand that?
A. Yes, sir.
Q. Did he do anything with his sex organs to you?
A. Yes, sir.
Q. What?

BY MR. GREAVES:

That's leading again, Your Honor.

BY THE COURT:

I know but—I don't think that's leading. I overrule the objection.

BY MR. GREAVES:

Note the objection to it.

[fol. 68] BY THE COURT:

All right.

BY MR. WALLER: (continuing)

Q. That means you can answer my question.
A. Would you mind repeating it, please?
Q. I asked you if he did anything with his sex organ to you?
A. Yes,sir.
Q. What?
A. (No answer)
Q. Do you understand what a woman's female organ is?

A. Yes, I do.
Q. Vagina. Do you understand that term?
A. Yes, sir.
Q. Did he do anything to your vagina?
A. Yes, sir.
Q. What?

BY MR. GREAVES:

Judge, I am still objecting to him putting things in her mouth.

BY THE COURT:

I overrule the objection.

BY MR. GREAVES:

Note our objection again.

BY THE COURT:

All right. Aleece, just go ahead, honey, and tell what he did to you. Just go ahead.
[fol. 69] A. I don't know how.

BY THE COURT:

Well, you understand Mr. Waller's question. Just answer Mr. Waller's question.

BY MR. WALLER: (continuing)

Q. Look, honey, did he put anything in you?
A. Yes, sir.
Q. What did he put in you? You said you understood what a man's sex organ was. Did he put that in you?
A. Yes, sir, he did.

BY MR. GREAVES:

We object again. Let the record show.

BY THE COURT:

All right. I will overrule the objection.

BY MR. WALLER: (continuing)

Q. Where did he put it in you, Aleece?
A. His sex organ.

Q. In your sexual organ?
A. (No answer)
Q. In your vagina?
A. Yes, sir.
Q. All right. What did he do when he put it in?
A. (No answer)
Q. Did he move at all?
A. Yes, sir.
Q. How?
A. Up and down.
Q. Up and down?
A. Yes, sir.

[fol. 70] BY MR. GREAVES:

We are still objecting. I just want the record to show.

BY THE COURT:

All right. I overrule the objection. That's not leading, anyway.

BY MR. WALLER: (continuing)

Q. After he put his sex organ in your vagina and moved up and down . . . . .
A. Yes, sir.
Q. More than once?
A. Yes, sir.
Q. Several times?
A. Yes, sir.
Q. How long?
A. I don't know, about thirty minutes, I guess.
Q. Did he still have the knife in his hand at this time?
A. Yes, sir.
Q. Was this negro man clean shaven or not?
A. No, sir, he was not.
Q. What did he have?
A. A goatee.
Q. Something growing on his chin, is that what you are talking about?
A. Yes, sir.

BY MR. GREAVES:

Judge, again, I object to him asking about the chin beard.

[fol. 71] BY MR. WALLER:

She said a goatee, Your Honor.

BY THE COURT:

Yes, I overrule the objection.

BY MR. GREAVES:

Note our objection again.

BY MR. WALLER: (continuing)

Q. I ask you whether or not you have ever had sexual relations with a man, Aleece?

A. No, sir.

Q. And he went up and down on you, you say for some several minutes. Is that right?

A. Yes, sir.

Q. What did he do then?

A. He got up.

Q. What did he do then?

A. He made me get up.

Q. You were bleeding from your hand at that time. Was anything else wrong with you then?

A. (No answer)

Q. When you got up.

A. I didn't notice.

Q. Did you put your clothes back on?

A. My shorts.

Q. What did you do with your under pants?

A. I left them there.

Q. Left them there in the corn field?

A. Yes, sir.

[fol. 72] Q. Left them there in the corn field?

A. Yes, sir.

Q. What color were they?

A. Blue, I believe.

Q. Did you all leave the corn field together?

A. Yes, sir.

Q. Then what happened?

A. Then we got back in the car and he made me sit in the middle and James was on the other side and he made us put our heads on the floorboard.

Q. You say he made you and James get inside and put your heads on the floorboard. Is that what you are saying?

A. Yes, sir, that's what I said.

Q. All right. Then what happened?

A. Then he drove. And he told us he was going to wreck the car and started driving real fast and real crazy and then he slowed down and told us he was going to take us back to where he found us. And he took us back there and he parked and he was hunting for a gun.

Q. You are going to have to slow down. He took you where now? Go slower.

A. He said he was going to take us back to where he got us. And then he drove a little while. And when we came back to where we were all the time we had our heads on the floorboard and he had a knife in my back.

Q. Had the knife in your back?

A. Yes, sir.

[fol. 73] Q. So you were laying face down on the floorboard?

A. Yes, sir. And then he looked for a gun in the car and he asked me if I had one in my purse and I told him "No." And he looked in the back seat of the car and under the back seat and he made James open the dash—open the glove compartment to see if there was a gun in there and there wasn't. And then he sat there and he told us he had leukemia and he could kill us and it wouldn't matter to him because he would die anyway. And then he told us if we knew what was good for us we would keep our heads there on the floorboard. Then he got out of the car and we stayed there for about ten more minutes, and James said we'd better.

Q. He told you if you knew what was good for you you wouldn't get out of the car?

A. Yes, sir.

Q. And you all stayed there about ten minutes in the car.

A. Five or ten minutes. And he told us he would leave the keys at the fork of the road. And then we got out and we cut across the field to Mr. Craft's house. We

didn't know who lived there at the time. And we called and somebody—they wouldn't let us in at first and then his son came to the door and came up there and asked us who we were and what happened. And they were real nice. They let us in.

Q. Wait a minute. I can't hear you. You went up to Mr. Craft's house?

A. Yes, sir.

Q. Then what happened?

[fol. 74] A. And we called to Mr. Craft and his son came down and let us in. His son was down from Jackson, I believe, staying with them and he let us in and let us sit on the couch while Mrs. Craft called the highway patrol and they were calling my mother and his father.

Q. Did you have anything on your hand that was cut at that time?

A. Yes, sir, while we were in the car James tore up one of his little brother's shirts and put it around my finger and when we got over to Mr. Craft's I took it off and tore off the collar of my blouse and put it on there because it was white.

Q. Did you have any blood on you anywhere?

A. Yes, sir, I had it on my blouse.

Q. At any time after this incident did you examine your shorts, the outside shorts that you had on?

A. No, sir, they were black.

Q. They were black?

A. Yes, sir.

Q. Did you look at them?

A. No, sir, I didn't.

Q. After it happened?

A. No, sir.

Q. Did you go to the hospital that night?

A. Yes, sir, I did.

Q. Did you go directly to the hospital from Mr. Craft's home?

A. After Mr. Noble asked us some questions I did.

Q. Were you examined when you arrived at the hospital?

[fol. 75] A. Yes, sir.
Q. By whom?
A. Dr. Haywood.
Q. Dr. Haywood?
A. Yes, sir.
Q. ~~Did he examine the same part of your body~~ (strike that, please) What part of your body did he examine?
A. (No answer)
Q. Did he look at your hand?
A. Yes, sir, he looked at my hand and he fixed that up.
Q. Did he examine your female . . . .
A. Yes, sir.
Q. . . . . organs?
A. Yes, sir.
Q. Were you treated by Dr. Haywood after that?
A. Yes, sir.
Q. Were you treated for your female organs?
A. Yes, sir.
Q. Your witness.

BY MR. GREAVES:

Stand aside. I don't care about asking her anything.

BY THE COURT:

All right. You can stand aside, Aleece.

CHARLES H. HEYWOOD

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

[fol. 76] BY MR. WALLER:

Q. State your name, please, sir.
A. Charles H. Heywood.
Q. What is your occupation, sir?
A. Physician.
Q. You are also known as a medical doctor. Is that correct?

A. That's correct.
Q. Where did you attend medical school, Dr. Haywood?
A. University of Tennessee.

BY MR. GREAVES:

We waive showing his qualifications.

BY MR. WALLER:

Let the record show that counsel for the defendant waives the presentation of the doctor's qualifications and stipulates he is a qualified medical doctor and practicing physician.

BY MR. WALLER:

Q. You have a clinic here in town, do you not, doctor?
A. Yes, sir.
Q. You also attend patients at the Canton hospital, don't you?
A. That's right.
Q. In your experience as a medical doctor are you acquainted with, you might say, the reproductive organs of women.
A. Yes, sir.
Q. Do you treat all types of ailments and conditions occurring to the female organs?
[fol. 77] A. Yes, sir.
Q. I direct your attention to the night of July 29th or early morning hours of July 30th and ask you whether or not you received a call to attend a patient at the Canton Hospital?
A. Yes, sir.
Q. What time was that, doctor, if you recall?
A. It was between 3 and 3:30 in the morning.
Q. Did you go to the Canton Hospital?
A. I did.
Q. And would you just tell the jury what you found when you arrived there?
A. Well, I found this young girl who they had called me to see that they said she had been assaulted.

Q. Now, without telling what anybody else said, I will ask you if this young girl you attended was Aleece Gober?

A. That's right.

Q. And did you examine her?

A. I did.

Q. And what—before we go into the examination I will ask you what condition you found her in, what did you observe as a doctor when you saw her?

A. Well, she was laying on the examining table there, and her hands and dress were bloody. She had a lacerated finger on, I believe it was on the left hand, and her—when I asked her—when I asked them what the trouble was, why they called me to see her, they said . . . . .

BY THE COURT:

Don't tell what she told you, doctor.

[fol. 78] A. Well,

BY MR. WALLER:

Q. Did you examine her?

A. I was asked to examine that patient and see if she had been assaulted.

Q. What do you mean when you use the term "assaulted?"

A. Raped.

Q. Did you make such an examination?

A. I did.

Q. Would you tell the jury in detail, sir, what you found?

A. Well, all around the outside of her vagina was bruised and swollen and it was bloody and the hymenal ring was ruptured and torn and then I took a syringe and aspirated, drew some of the fluid of her vagina and examined that and found male sperm present in her vagina. Then we put that under a microscope, that fluid under a microscope, so we could see if there was sperm present and there was. And after that, why, then I went ahead and repaired her finger that had been cut with a knife.

Q. Now, speaking of the outside area of the vagina, would you state in detail what you found, again, sir?

A. Well, she was bloody between her legs. And the hymenal ring was torn and she was swollen and bruised and fresh blood was present there.

Q. The hymen ring is located where, sir?

A. That's right at the entrance to the vagina.

Q. In putting it in lay language, what does the hymen ring mean in so far as a woman's past sexual relations is concerned?

[fol. 79] A. Well, usually it indicates whether they have ever had intercourse or not.

Q. Is the hymen ring ruptured with intercourse?

A. Usually, is, yes, sir.

Q. I will ask you whether or not the hymen ring of Aleece Gober ruptured . . .

A. It had.

Q. Recently.

A. Recently.

Q. Recently?

A. Yes, sir.

Q. Is that what was causing the blood?

A. Yes, sir, and the bruises between her legs and the entrance to her vagina.

Q. I ask you whether or not you reached a conclusion as to whether or not she had been raped?

A. Well, she had been—had had sexual intercourse forcibly.

Q. And you say that you recovered male sperm?

A. That's right.

Q. As far as the anatomy of the body is concerned, doctor, would you tell the jury where you recovered the male sperm?

A. In the mouth of the womb.

Q. In the mouth of the womb?

A. That's right.

Q. And you examined that, as you said, with a microscope?

A. That's right.

[fol. 80] Q. Your witness.

CROSS EXAMINATION

BY MR. GREAVES:

Q. Doctor, this sperm that you found, could you tell whether that was white or black sperm, male black or male white, could you tell?

A. No, sir, there is no way for us to tell.

Q. No way for you to tell?

A. No, sir.

Q. You say it shows that was the first time she had had intercourse?

A. Yes, sir.

Q. You are positive of that?

A. All evidence indicated that.

Q. That's all.

BY MR. WALLER:

Thank you, doctor.

BY THE COURT:

Are you all through with the doctor?

BY MR. WALLER:

Yes, sir.

(Witness excused)

CHARLES SNODGRASS

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. State your name, please, sir.

A. Charles Snodgrass.

[fol. 81] Q. Where do you live, Mr. Snodgrass?

A. Canton.

Q. You have for a number of years served with the Mississippi State Highway Safety Patrol?

A. Yes, sir.

Q. Recently you were changed from a uniform patrolman, to what?

A. To the Identification Bureau.

Q. Are you now assigned to the headquarters office in Jackson?

A. Yes, sir.

Q. Working in identification work?

A. Yes, sir.

Q. I ask you whether or not you assisted the sheriff of Madison County at his request in a case involving an assault in Madison County?

A. I did.

Q. Do you recall the date and the time that you proceeded with your investigation or assisted him in his investigation?

A. Yes, sir, it was on July the 30th.

Q. What time, please, sir?

A. About 2 o'clock in the morning.

Q. I will ask you whether or not you were present at the arrest or immediately after the arrest of one William Smith, Jr.?

A. I wasn't present at the time he was arrested. I saw him shortly after he was arrested.

Q. Do you see him in the court room?

[fol. 82] A. Yes, sir.

Q. I ask you whether or not you were present and assisted the other officers in the service of the search warrant on his house to recover certain property?

A. Yes, sir.

Q. ~~Do you know what, were you present~~ (strike that question). What was recovered from his house, if anything?

A. A knife and a watch.

BY MR. GREAVES:

We object to that now. We got a confession here now. Judge, I think.

BY MR. WALLER:

I haven't mentioned that.

BY THE COURT:

I don't believe he has gotten to that, Mr. Greaves. What he's asking him about is about the search of the house. Now, are you making any objection to that? He hasn't asked him about anything else. Is that all right to proceed now? You make your objections—talk loud enough so Mrs. Welborn can get it.

BY MR. GREAVES:

I am not going to object to this. Let him ride.

BY THE COURT:

All right. All right, Mr. Greaves.

BY MR. WALLER: (continuing)

Q. I hand you—did you state what you recovered from the house?

A. A knife and a watch.

Q. All right, sir. I hand you a watch and ask you [fol. 83] whether or not that is the watch that you recovered?

A. Yes, sir, that's the watch.

Q. Is the watch in the same condition now as it was when you recovered it?

A. Yes, sir.

Q. I ask you who owns that watch?

A. James Myers.

BY MR. GREAVES:

I object to that.

BY THE COURT:

I sustain the objection to that because he doesn't know that, Mr. Waller.

BY MR. WALLER:

All right, sir.

BY THE COURT:

He doesn't know that to be true. I sustain the objection.

BY MR. WALLER: (continuing)

Q. Did you recover this watch from the home of William Smith, Jr?

A. Yes, sir.

Q. Have you had it in your possession and under your control since the time it was recovered?

A. Yes, sir.

Q. All right. ~~Did your investigation reveal that a watch~~ (strike that). What did your investigation reveal as to this watch?

A. My investigation revealed that a watch had been taken from a subject by the name of James Myers. After this watch was recovered from William Smith, Jr's house [fol. 84] the watch was carried by . . . . .

BY THE COURT:

Wait just a minute, Mr. Snodgrass, he hasn't asked you that. Don't volunteer.

BY MR. WALLER:

Q. I ask you whether or not you had a description of the watch at the time you were serving the search warrant on the—for the recovery of the recovery of the watch at William Smith's house?

A. Yes, sir.

Q. Did this watch fit that description?

A. Yes, sir.

BY MR. WALLER:

All right. If it please the Court, I offer this watch into evidence.

BY THE COURT:

All right. Any objection, Mr. Greaves?

BY MR. GREAVES:

The watch has not been identified as the property of Mr. Myers, Your Honor, and I object to it on that ground.

BY THE COURT:

I sustain the objection.

BY MR. WALLER:

I ask that it be marked for identification.

BY THE COURT:

That may be done. It may be marked for identification but not as an exhibit at this time.

BY MR. WALLER:

All right, sir.

[fol. 85] (Watch marked for identification only by the court reporter.)

BY MR. WALLER:

Q. Did you have at that time and place—did you have a description of any other property you were looking for that was used in this assault?

A. Yes, sir.

Q. What?

A. A knife.

Q. What kind of a knife?

A. It was a knife with some writing and advertising matter, the way it was described to me, with about a two inch blade in it.

Q. Did you find such a knife in the home of the defendant, William Smith, Jr?

A. Yes, sir.

Q. Where did you find it?

A. Between a partition wall.

Q. All right. How did you know to look between the partition wall for the knife?

A. William Smith, Jr. told us where the knife was and pointed out the place for us to look.

Q. Did you find the knife where he said it was?

A. Yes, sir.

Q. Did the knife fit the description you had as a result of your investigation?

A. Yes, sir.

Q. Do you now have that knife in your possession?

[fol. 86] A. Yes, sir.

Q. Is it in the same condition now as it was when you recovered it?

A. Yes, sir.

Q. All right. What does the knife have to do with the assault on Aleece Gober, if anything, if you know?

A. This was the knife that was used.

BY MR. GREAVES:

I object to that. He don't know.

BY THE COURT:

I sustain the objection.

BY MR. WALLER: (continuing)

Q. ~~Does that knife~~ (strike that) I ask you whether or not that knife was the same one that was described to you as having been used?

A. Yes, sir.

BY THE COURT:

I sustain the objection, Mr. Waller. You can't get around it this way. Mr. Greaves objected to it and I am sustaining the objection.

BY MR. WALLER: (continuing)

Q. Did your investigation—what type of weapon, if any, did William Smith use in this incident, if your know from your investigation?

A. A knife.

Q. All right. What type of knife, a butcher knife, hand knife, pocket knife, or what kind of a knife?

A. Pocket knife.

Q. All right. Is that a pocket knife you have in your [fol. 87] hand?

A. Yes, sir.

Q. Did your investigation reveal what type of blade it had on it?

A. About a two inch blade, sir.

Q. All right. What type of blade does that knife have on it?

A. About a two inch blade.

Q. All right. Did the investigation reveal what other type of mark or identifying word symbol that the knife might have had on it? From your investigation.

A. Only that it was advertising.

BY MR. GREAVES:

I object to that. He doesn't know what it was.

BY THE COURT:

I sustain the objection.

BY MR. WALLER: (continuing)

Q. I ask you whether or not this knife was the same color as the knife you were looking for with your search warrant?

A. Yes, sir.

BY MR. GREAVES:

We object to that.

BY THE COURT:

I sustain the objection.

BY MR. WALLER:

If it please the Court, I offer this knife into evidence.

[fol. 88] BY THE COURT:

Mr. Waller, everything he has testified to which is why I have sustained it is because it is what somebody told him. You can't get into it that way. I sustain the objection.

BY MR. WALLER:

I would like to have it marked for identification, Your Honor.

BY THE COURT:

You may have it marked for identification.

(Exhibit marked by the court reporter as State Exhibit 2 for identification only to the testimony of Witness Snodgrass.)

BY MR. WALLER: (continuing)

Q. Did you make any further investigation into the place where this assault took place?

A. Yes, sir, I did.

Q. Did you go to the scene?
A. Yes, sir.
Q. Who was with you?
A. Sheriff Noble and there was—James Myers went to the fence, as far as the fence, and Deputy Sheriff Stone and there was two or three other people I don't recall.
Q. What physical evidence was present?
A. Found a pair of panties.

BY MR. GREAVES:

I object. Did you go to the place?
A. I didn't understand you.

BY MR. GREAVES:

Q. Did you go into the corn field?
[fol. 89] A. Yes, sir.

BY MR. GREAVES:

Q. You went up to the place?
A. I went to the place, yes, sir.

BY MR. GREAVES:

All right, I don't object.

BY THE COURT:

All right, Mr. Waller.

BY MR. WALLER: (continuing)

Q. What physical evidence did you find within the corn field to indicate where this assault took place, if any?
A. I found the grass had been parted and tromped down. Found some blood and found a pair of blue panties.
Q. Where were the blue panties in reference to the blood?
A. Right there—right at the blood. It was in the middle between two rows of corn.
Q. And James Myers had pointed out to you where the corn patch was, so to speak?
A. Yes, sir.

Q. Now, I will ask you whether or not you have those blue under pants in your possession at this time?

A. Yes, sir.

Q. Are they in the same condition now as they were when you recovered them?

A. Yes, sir.

Q. Have they been in your custody, care, and control since the date and time you recovered them?

A. Yes, sir.

[fol. 90] Q. All right.

BY MR. WALLER:

If it please the Court, I offer these pants into evidence.

BY MR. GREAVES:

He has not identified them.

BY THE COURT:

No, I think—are you objecting to it?

BY MR. GREAVES:

Yes, sir.

BY THE COURT:

I overrule the objection. I think they have been sufficiently identified. He has offered them now as an exhibit. I will overrule the objection and permit the introduction as an exhibit.

(Exhibit received in evidence as marked by the court reporter as State's Exhibit 3 to the testimony of Witness Snodgrass.)

[fol. 91] BY MR. WALLER:

I want to ask the witness to step down for just a minute.

Q. Just for the record, what color are those pants, Mr. Snodgrass?

A. Blue.

Q. Are you now acquainted with Aleece Gober?

A. I didn't understand your question.

Q. Are you now acquainted with Aleece Gober?

A. Yes, sir.
Q. The young lady that's involved in this matter?
A. Yes, sir.
Q. Did you recover from her a blouse she had on?
A. (No answer)
Q. Any part of her clothes?
A. Yes, sir.
Q. Do you have that blouse in your possession ow?
A. Yes, sir.
Q. What color is it?
A. It's a white blouse.
Q. All right. Is it in the same condition now as it was when you recovered it?
A. After I recovered it, it was out of my control.
Q. Where was it—what did you do with it?
A. It was sent to the FBI laboratory at Washington.
Q. Was it sealed when it was sent?
A. It was sealed when it was sent, yes, sir.
Q. Is it sealed now?
A. Yes, sir, it is sealed now.
[fol. 92] Q. Have you tampered with it in any way?
A. No, sir.

BY MR. WALLER:

If it please the Court, we have here an envelope in which there is a white blouse. We would like to have marked for identification.

BY THE COURT:

All right. That may be done.

(Exhibit marked by the court reporter as State's Exhibit 4 to the testimony of Witness Snodgrass for identification only.)

BY MR. WALLER:

Q. Directing your attention now to the search of the defendant's house, William Smith, Jr., did you recover any other articles other than those we have referred to?
A. Yes, sir.
Q. What?

A. A pair of khaki pants.

Q. All right. Did you take those pants into custody?

A. Yes, sir, I did.

Q. All right. What did you do with them?

A. They were handled the same way as the blouse. They were sealed and sent off to the FBI laboratory.

Q. At the time you sealed them and sent them to the FBI laboratory, were they in the same condition then as when you recovered them?

A. Yes, sir.

Q. All right. I hand you a paper ba and ask you what that is?

[fol. 93] A. That's the khaki pants.

Q. All right. Have they been disturbed in any way since they were returned to you by the FBI laboratory?

A. No.

Q. Are they sealed?

A. Yes, sir.

Q. Has the seal been disturbed?

A. No, sir.

Q. All right. Those are the pants, the bag that has the pants in them, that you recovered from the defendant's house?

A. Yes, sir.

Q. And when we refer to pants, what do you mean?

A. The khaki pants that came from the house of William Smith, Jr.

BY MR. WALLER:

If it please the Court, I would like to have this bag marked for identification.

BY THE COURT:

All right.

(Exhibit marked by the court reporter as State's Exhibit 5 to the testimony of Mr. Snodgrass, for identification only.)

BY MR. WALLER:

Q. Did you recover any other articles of clothing that Aleece Gober was wearing on this occasion?

A. Yes, sir.
Q. What?
A. A pair of black shorts.
[fol. 94] Q. What did you do with them?
A. They were handled like the others, carried into headquarters, sealed and sent to the FBI laboratory.
Q. All right. I hand you a bag and ask you what is in it?
A. That's the black shorts taken from Aleece Gober.
Q. All right. Were the shorts in the same condition when you mailed them as when you received them into custody?
A. Yes, sir.
Q. Have they been opened or tampered with since they were returned to you by the FBI laboratory?
A. No, sir.

BY MR. WALLER:

If it please the Court, I offer this for identification.

BY THE COURT:

All right.

(Exhibit marked by the court reporter as State's Exhibit 6 to the testimony of Witness Snodgrass, for identification only.)

BY MR. WALLER:

Q. Did you talk to the defendant, William Smith, after his arrest?
A. Yes, sir.

BY MR. WALLER:

Your Honor, I am ready now.

JURY EXCUSED

BY THE COURT:

All right. The jury may retire.

(By order of the Court the jury retired from the [fol. 95] court room and the following proceedings were in the presence of the Court and in the absence of the jury.)

BY MR. GREAVES:

Judge, I would like to read this to the defendant back here.

BY THE COURT:

You want to do that?

BY MR. GREAVES:

Yes, sir.

BY THE COURT:

All right. Sheriff, take him back in the room with Mr. Greaves.

(After being out of the court room, pursuant to the foregoing, the defendant and Mr. Greaves then returned to the court room and the following proceedings were had and done in the presence of the Court and in the absence of the jury.)

BY MR. WALLER:

Q. Mr. Snodgrass, did the defendant in your presence make any oral statements about this assault?

A. Yes, sir.

Q. All right. I will ask you where he made those statements?

A. In the highway patrol headquarters building in Jackson.

Q. All right. Who was present?

A. I was present and Sam Ivy, who is the Director [fol. 96] of the Identification Bureau, was present. Mr. Art Richardson, who is with the highway patrol, was present. Sheriff Noble was present.

Q. What type of a room or where were you all situated within the building there?

A. We were in an office on the second floor of the headquarters building.

Q. Did it have bars on the window or anything like that?

A. No, sir.

Q. All right, sir. How were you dressed?

A. I was dressed in civilian clothes.

Q. All right. How was Sheriff Noble dressed?
A. Civilian clothes.
Q. How was Mr. Richardson dressed?
A. In civilian clothes.
Q. And how was Mr. Sam Ivy dressed?
A. In civilian clothes.
Q. All right. What weapons, or you might say, firearms or other weapons were exhibited in the presence of the defendant at the time he made this admission?
A. I don't recall any firearms being exhibited. I know that I had been wearing a firearm.
Q. Was he threatened with any weapons or threats in any way, words or remarks?
A. No, sir, he was not threatened.
Q. All right. What promises or rewards were offered to him to make a statement?
[fol. 97] A. No rewards or promises were made to him.
Q. What threats of violence or punishment were made to him in your presence at that time in order to induce him to make a confession?
A. There were no threats made.
Q. I ask you then whether or not the statement made by the defendant in your presence was free and voluntary?
A. It was.
Q. What advice was he given with reference to an attorney or advice from some one else before making the statement?
A. He was explained that he had the right to have an attorney present.
Q. What was told him in reference to the use of the statement later in court?
A. He was told that statement could be used in a court of law against him later.
Q. After having told him that was the defendant then willing, further willing to make a voluntary statement?
A. Yes, he was.
Q. Did he make a statement?
A. He did.
Q. I ask you whether or not it was reduced to writing?
A. It was.

Q. It was written?
A. Typewritten.
Q. Who typed the statement?
A. Art Richardson.
Q. That's the gentleman that you spoke of. I hand [fol. 98] you a typewritten, single spaced statement covering two full pages and ask you whether or not that's the statement that the defendant made?
A. Yes, sir, that's the statement.
Q. All right. In your presence?
A. Yes, sir.

BY THE COURT:

Mr. Waller, did you ask him—if you did, I didn't get it—when it was he was at the highway patrol office on the second floor?

BY MR. WALLER:

Q. What day was it?
A. It was made on the 30th, on Sunday.
Q. On Sunday, the 30th.

BY THE COURT:

What time?

BY MR. WALLER:

Q. What time?
A. Made about 4 o'clock in the afternoon.

BY THE COURT:

All right.

BY MR. WALLER:

Q. After the statement was typed was it read or exhibited to the defendant?
A. The defendant looked over the statement and I asked the defendant would he like for me also to read it back to him, which I did.
Q. Did you read every word of the statement?
[fol. 99] A. I read each and every word of it.
Q. On both pages?
A. Yes, sir.

Q. Did you ask him whether or not he understood the statement?

A. Yes, sir.

Q. What did he say?

A. He said he did understand the statement.

Q. Did he sign the statement?

A. Yes, sir,

Q. In presence of witnesses?

A. Yes, sir.

Q. The statement consisting of two typewritten pages, did you leave out anything or explanation that the defendant wanted to make of what he had said?

A. No, sir.

Q. Did you refuse to allow him to make any further remarks and include them in the statement?

A. No, sir.

Q. Is the statement complete in itself in so far as his detailing what happened in his confession generally?

A. Yes, sir.

Q. Now, it is already in the record, Mr. Snodgrass that this incident occurred in the vicinity of 2 A.M. on the 30th day of July 1961 and the statement was taken at approximately 4 P.M. on the 30th day of July, 1961. Had you seen the defendant at any time prior to the time he started making his confession?

[fol. 100] A. Yes, sir.

Q. Will you tell the Court whether or not the defendant had been abused in any way or threatened in any way to cause him to talk or to make a statement?

A. He had not been threatened or abused in any way, not to my knowledge.

Q. Based upon the statement made in your presence in the conversation that you had with the defendant at the time and place, did you do anything that would corroborate the facts in the statement?

A. Would you repeat that, Mr. Waller?

Q. Did you do anything to prove, corroborate, whether or not the statement was true.

A. I don't follow you there.

Q. Did you make any investigation based upon what the defendant said in the statement, any further?

A. Yes, sir.

Q. All right. We were talking earlier while the jury was here about the knife and the watch and the pants and other things. Was any information obtained from the defendant in reference to those articles?

A. Yes, sir.

Q. And in other words, you testified that you found the knife in the wall of his house?

A. Yes, sir.

Q. Did you get that information from the defendant?

A. Yes, sir.

Q. Did that prove to be true?

A. Yes, sir.

[fol. 101] Q. Did you recover the pants he was wearing the night of this assault?

A. Yes, sir.

Q. All right. At 4 o'clock in the afternoon do you know whether or not the defendant had been fed and given drink and permitted bathroom privileges throughout the day?

A. He was in the county jail until we carried him to the highway patrol headquarters. I know he had bathroom facilities there.

Q. Do you know whether or not he had been fed that day?

A. I don't know of my own knowledge.

Q. He was treated as a regular prisoner, wasn't he?

A. Yes, sir.

Q. Can you tell the Court anything, Mr. Snodgrass, that was done or said to the defendant that would cause him to involuntarily make this statement?

A. I knew of nothing.

Q. Did you promise him a light sentence if he would talk?

A. No, sir, I made no promises.

Q. Was he fully dressed at the time he made the statement?

A. Yes, sir.

Q. Was he handcuffed or shackled in any way at the time he made the statement?

A. No, sir.

Q. Were there any electronic devices or other electric [fol. 102] appliances attached to his body at the time he made the statement?

A. No, sir.

CROSS EXAMINATION

BY MR. GREAVES:

Q. Before the confession you had applied to him electric devices, hadn't you, down there?

A. No, sir, I hadn't.

Q. You hadn't?

A. No, sir.

Q. Now, you state that free and voluntary, right out of his mouth he came and told you all he had committed this crime. The negro, I said, just free and voluntarily just came and said, "I did it." Is that it?

A. Free and voluntary, yes, sir.

Q. Free and voluntary. Now, isn't it a fact that you told him, you and the rest of them, told him that this other negro with him, who was in the robbery with him, had already confessed and that if he didn't confess to it that you were going to bring him back here and put him in the county jail and let a mob have him?

A. (No answer)

Q. Didn't you tell him that this negro, James Matlock, had already confessed to the crime—did you tell him that?

A. I don't recall. There's a possibility I did. I don't recall of having told him that.

Q. Then, didn't you tell him that if he didn't confess to the crime then he would be brought back here, locked up in the county jail in Canton and allow a mob to take him out and string him up?

[fol. 103] A. No, sir.

Q. You didn't tell him that?

A. No, sir.

Q. You deny that?

A. Yes, sir.

Q. You all had—this other negro, you already had gotten a confession from him, hadn't you?

A. Yes, sir.

Q. The negro with him in the robbery.
A. Matlock had admitted his part.
Q. Admitted his part.
Q. You didn't tell him that Matlock had already confessed and the best thing for him to do was to confess and you would leave him in Jackson and not bring him up here?
A. No, sir, I didn't mention anything about where he would be carried.
Q. That's all.

BY MR. WALLER:

Stand aside.

MR. BILLY NOBLE

having been previously sworn, was recalled as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are Sheriff Noble who previously testified in this case?
A. Yes, sir.
Q. What time and place did you arrest the defendant, [fol. 104] William Smith, Jr?
A. The defendant was arrested at his home at approximately 4 or 4:30 on the morning of September 30th by Deputy Sheriff Stone.
Q. Were you present when he was arrested?
A. No, sir.
Q. All right. When did you first see the defendant?
A. Canton Police Department.
Q. Canton Police Department?
A. Yes, sir.
Q. What time?
A. Around a quarter to five or 5 o'clock in the morning.
Q. Was he fully dressed at that time?
A. Yes, sir.

Q. All right. What did you do with him at the Canton Police Department?

A. He was placed in the Canton Police Department and made a transfer to the county jail along with several others that we picked up. He was placed in a line-up with approximately eight or nine other suspects at the county jail.

Q. At the county jail?

A. Yes, sir.

Q. And no mistreatment was given them, was there?

A. No sir, he was placed in the line-up with these subjects and the victims were brought in one at a time and they were told to sit and listen to each individual answer questions. This was done by Charley Snodgrass, at which point we observed the reaction to the questions [fol. 105] and to each individual. The victim was removed and the Myers boy was brought in and the same line of questioning went on with Charley asking each one in the line-up the different set of questions.

Q. How long did he remain at the Madison County jail?

A. He was taken along with the Medlock boy and another negro to the Hinds County—to the Mississippi Highway Patrol office in Jackson approximately 11 or 11:30 that morning.

Q. How long did he stay there?

A. He stayed there until around 6 o'clock, 5:30 or 6, at which time he was brought back to his house in the sawmill quarters at which point he pointed out to us the place where he had placed the knife and also the watch. He identified the pants that he had on that night that he had washed and placed in the duffle bag. We recovered the knife from the wall where he stated he had placed it. We recovered the watch from the kitchen where his wife had taken it out of the windowsill where he said he had left it. We did not recover the wallet.

Q. What time was that?

A. Approximately 6:30 or 7 o'clock the evening of September the 30th—July the 30th.

Q. What time did he give the confession?

A. He gave the confession around 3:30 or 4 o'clock on the evening of July the 30th.

Q. And you left Canton—Madison County jail here in Canton about 11 o'clock with him?

A. Yes, sir.

Q. Where did you go then?

[fol. 106] A. We took him to the Mississippi Highway Patrol Identification Bureau in Jackson where he, the Medlock boy were placed on the lie detector test there at the Mississippi Highway Patrol office.

Q. Was he put in the Hinds County jail at any time during the day?

A. After he was brought back to Canton and identified the knife and also his pants, his under shorts, and under pants were removed and he was given other clothes to put on. He was taken back to the Hinds County jail by myself that night.

Q. Do you know whether or not he was fed at any time during the day prior to the confession?

A. Breakfast facilities were available to him at the Canton jail.

Q. Were you present at the time he confessed?

A. Yes, sir.

Q. Had he been generally in your custody and within your observation from the time he was arrested until the time that he confessed?

A. No, sir.

Q. All right. Were you present in the highway patrol building when he was there?

A. Yes, sir.

Q. From your knowledge, was he mistreated in any way from the time he was arrested until the time he gave his confession and signed it?

A. No, sir.

Q. What threats or violence or abuse did you give or offer to the defendant in an effort to induce him to make [fol. 107] this statement?

A. He was confronted with the confession in front of James Matlock as to the part that he played to put him out of the car at the scene of the crime. James Matlock told him in his presence and also in my presence that he had told us that they had gone there to rob them. They were left in the room together by themselves.

Q. What rewards, if any, did you promise William Smith, Jr?

A. (No answer)

Q. In other words, what promises did you give him in an effort to cause him to make this statement?

A. None.

Q. Did you tell him the sentence would be lighter if he would talk or do anything to coerce him to make the statement?

A. No, sir, the only thing that was told to him was that he was entitled to a lawyer and anything that he told us could be used on him in an open court of law. He was told that in the presence of James Matlock at which point he sat there for awhile and broke a couple of match sticks and throwed them in the ash tray and told me that he was the one we were looking for. And that he was the one that had done the crime. He proceeded to tell us the way he had gone which corroborated the statement given to us by the victims.

Q. He told you he was the man and that was a voluntary statement?

A. Yes, sir.

[fol. 108] Q. Then he proceeded to give you the details?

A. Yes, sir. I would ask him questions and he would answer them and then he would start and tell us the way that it happened and the place, the time and the method.

Q. And I believe Mr. Sam Ivy was present at this time?

A. Yes, sir, Mr. Sam Ivy, Mr. Art Richardson, Mr. Charley Snodgrass was taking down the statement at that time in my presence.

Q. Was the defendant shackled or handcuffed or tied up in any way?

A. No, sir.

Q. Was anybody holding a gun around him?

A. (No answer)

Q. Scare him or do anything to frighten him?

A. I had a sidearm on but it was hostered.

Q. I was holstered?

A. Yes, sir.

Q. Did any one threaten him—any other person threaten him in your presence?

A. Not to my knowledge.

Q. At the time you were talking to him, was the defendant normal in every way?

A. (No answer)

Q. Was he talking normally?

A. He talks low but you could hear him, I mean, he talked like he usually talks.

Q. Were you present when the statement was read [fol. 109] to him?

A. Yes, sir.

Q. From his appearance, in your opinion, did he understand the statement?

A. Yes, sir.

Q. Did he sign it?

A. Yes, sir.

Q. I believe that's all.

CROSS EXAMINATION

BY MR. GREAVES:

Q. Mr. Sheriff, you say that he just freely and voluntarily told you and the other fellow that, "I am your man?"

A. Yes, sir.

Q. Told you that?

A. Yes, sir.

Q. Now, isn't it a fact that Snodgrass told him that if he didn't confess it, that the other negro had confessed to his part in the robbery and that if he didn't confess to the rape and sign a statement that they would bring him back to—back here to Canton and lock him up in your jail and let a mob have him?

A. I wasn't present if he made that statement, Mr. Jack.

Q. After Smith was taken from your jail here in Canton was he placed in the county jail before he made the confession?

A. No, sir.

Q. In Hinds County?

[fol. 110] A. No, sir. He was taken direct to the Mississippi Highway Patrol Identification Bureau.

Q. Didn't you all tell him, "Now, this machine picks you out as the one that committed that crime, you better confess?"

A. Would you repeat that question?

Q. Didn't you all tell him, "Now, this machine picks you out as the one that committed that crime and you better confess?"

A. It showed that—the questions that he answered showed that he was lying at the point or the question that was asked. . . .

Q. Did you tell him the machine said he was lying and he had better confess?

A. The machine did show that he was lying.

Q. I asked you if you told him?

A. Yes, sir, I told him that, yes, sir.

Q. You told him he had better confess because the machine showed he was lying?

A. The machine showed he was lying, yes, sir.

Q. That's all.

BY MR. WALLER:

Call Mr. Sam Ivy.

MR. SAM IVY

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

[fol. 111] Q. You are Mr. Sam Ivy of the Identification Bureau of the Highway Safety Patrol of the State of Mississippi?

A. That's right.

Q. You were requested by Sheriff Billy Noble of Madison County to assist him in the investigation of a rape case in Madison County on July 30th, were you not, Mr. Ivy?

A. Yes, sir.

Q. Do you see the defendant, William Smith, in the courtroom?

A. Yes, sir.

Q. I ask you whether or not you saw him at the Patrol headquarters on Sunday, July the 30th?

A. Yes, sir.

Q. What time did you see him?

A. It was shortly after dinner.

Q. Shortly after noon?

A. Yes, sir.

Q. All right. Did you talk to the defendant?

A. I did.

Q. Were you present when he made an oral confession in reference to an assault on a young lady here in Madison County?

A. Yes, sir, I was.

Q. Preliminary thereto I will ask you what threats or punishment or violence was made to him by any one.

A. No one threatened him or punished him in any manner.

Q. What promises of reward or light punishment was offered to him in an effort to induce him to make a statement?

A. No, sir.

[fol. 112] Q. All right. He was questioned about his implication in this matter, was he not?

A. Yes, sir.

Q. What advice was he given in reference to an attorney or the fact that a statement that he made might be used in a court of law?

A. He was advised of his right there which is . . .

Q. Was that before he confessed?

A. Yes, sir.

Q. Mr. Richardson was there in the room with you all, was he not?

A. That's right, he was.

Q. Now, he's the gentleman who typed this statement, isn't he?

A. Yes, sir.

Q. I ask you whether or not the statement as typed was essentially the words that he spoke?

A. He typed it exactly as he said it.

Q. In other words, he reproduced the words on the typewriter as they were spoken by the defendant?

A. Yes, sir.

Q. I ask you whether or not there was any weapons or any other devices exhibited around the defendant to scare him to cause him to talk when he didn't want to?

A. No, sir.

Q. From your observation of the defendant, I will ask you whether or not the statement that he did make was entirely free and voluntary on his part?

[fol. 113] A. Yes, sir.

Q. Were you present after Mr. Richardson finished typing the statement?

A. Yes, sir.

Q. Was it read to him?

A. Yes, sir.

Q. I ask you whether or not the defendant in your presence signed the statement?

A. Yes, sir, he did.

Q. Is the statement complete within itself or was something left out that the defendant might have said?

A. It is complete—what he said.

Q. Is this room in the Highway Patrol headquarters just an ordinary room like you find in any office building?

A. Identification Bureau.

Q. Desk and chairs—no windows?

A. Yes, sir, there's windows.

Q. No bars?

A. No bars.

Q. How were you dressed?

A. I was dressed in a short sleeve sport shirt.

Q. Did you have on any weapons?

A. No, sir.

Q. Was the defendant dressed—fully dressed?

A. Yes, sir.

Q. Normal in every way. Any shackles or handcuffs on him?

A. No, sir.

[fol. 114] Q. Were you present at the taking of a confession from a negro named Medlock?

A. No, sir, I wasn't present when they took that.

Q. Did you see Medlock that day?

A. Yes, sir.

Q. How many years experience have you had in this type of work?

A. Fourteen years.

Q. Was the defendant mistreated in any way to cause him to make this statement?

A. No, sir, he was not.

Q. You tell the Court, do you, Mr. Ivy that his confession is entirely free and voluntary?

A. Correct.

Q. The defendant knew when he made it that it could be used in court against him. You tell the Court that?

A. That's correct.

Q. That's all.

BY MR. GREAVES:

Mr. Ivy, stand aside. I don't have any questions.

BY MR. WALLER:

Call Mr. Richardson.

MR. ARTHUR B. RICHARDSON

after having been duly first sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. State your name, please, sir.

[fol. 115] A. Arthur B. Richardson.

Q. You are with the Identification Bureau of the State Highway Department, of the State Highway Patrol?

A. I am with the State Highway Patrol. I am not a member of the Identification Bureau, however.

Q. You work for them?

A. Yes, sir.

Q. Were you working on Sunday, July 30th?

A. Yes, I was.

Q. Do you remember talking to or being in the presence of William Smith, Jr. who is seated over there the day—that same day in the afternoon?

A. Yes, sir.

Q. I ask you whether or not you typed a two page confession that William Smith gave at that time?

A. Yes, sir, I did type it.

Q. I will ask you to state whether or not that statement is reproduced by you in his words as the questions were asked him?

A. Correct.

Q. Is Mr. Ivy—the name "Ivy" that appears in there, is that Mr. Sam Ivy?

A. That's Sam Ivy, investigator for the Identification Bureau.

Q. Did you take down in shorthand or on tape or how did you reproduce it?

A. I did not. I took it on the typewriter as he made the statement.

[fol. 116] Q. In other words, you wrote—you typed out the questions and typed out the answers for each and every one of them as you came to them?

A. Yes, sir.

Q. You used his language in answering those questions?

A. I did.

Q. I will ask you, prior to his making the confession, were you in the room?

A. (No answer)

Q. Before he started giving you this statement that you took down on a typewriter?

A. Yes, I was.

Q. All right. I ask you what promises or rewards were offered to Smith in an effort to induce him to make this statement?

A. None.

Q. What threats or violence or threats of punishment were offered to him to cause him to make the statement?

A. None.

Q. I ask you whether or not he was advised that he had a right to use a lawyer, to the use of a lawyer, and that the statement could be used in a court of law?

A. He was.

Q. Was he normal in appearance and in talking—did he appear to be normal in every way?

A. Yes, sir.

Q. All right. After those statements were made to him. [fol. 117] I take it then he started talking and you started typing. Is that right?

A. That's correct.

Q. Were you present after you finished typing the statement?

A. (No answer)

Q. Did you remain in the room?

A. I did.

Q. I ask you whether or not that statement was read to him word for word?

A. It was.

Q. Was he asked whether or not he understood it?

A. He was.

Q. What did he say?

A. He replied that he did understand it.

Q. All right. I ask you whether or not he signed it?

A. Yes, he signed both pages.

Q. You were dressed in street or civilian clothes at that time?

A. Yes.

Q. Did you have any weapons on?

A. No, I did not have a weapon.

Q. Was that a normal room just like a room you find in any office building, is that right?

A. (No answer)

Q. It wasn't a jail or a cell?

A. Secretary's office in the Identification Bureau.

[fol. 118] Q. Secretary's office and you were seated at the typewriter?

A. That's correct.

Q. Was the defendant shackled or handcuffed in any way?

A. No, he was not.

Q. I believe that's all.

CROSS EXAMINATION

BY MR. GREAVES:

Q. You say when this negro spoke you wrote down each and every answer?

A. Yes, sir, I did.

Q. Isn't it a fact that you wrote it down in a white man's language and not in the language of a negro with a second grade education?

A. No, I don't think that's true altogether. I think if you will read the statement carefully you will find the grammatical construction and so forth indicate a person with a little less than an average grammar training.

Q. You say that things like "I opened the door and caught the white man around the reck. He began to scream and I threatened him with my knife." You say that was the perfect language of a negro with a second grade education?

A. That's the statement as he gave it.

Q. That's the kind of language he used. O.K. That's all.

[fol. 119] MR. RICHARD STONE

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are Mr. Richard Stone, deputy sheriff of Madison County?

A. Yes, sir.

Q. I will ask you whether or not you arrested one William Smith on the morning of July 30, 1961?

A. I did.

Q. Where was he?

A. At his home.

Q. That's in Madison County, Mississippi?

A. Yes, sir.

Q. I ask you whether or not if you at that time mis-

treated or abused or otherwise in any way mistreated the defendant, William Smith?

A. I did not.

Q. Where did you carry him?

A. Brought him to the city jail in Canton.

Q. That's the city of Canton police station and jail here in the town limits?

A. Yes, sir.

Q. Did you see Sheriff Billy Noble there?

A. Yes, sir.

Q. Where you present when he was carried from the city jail to the county jail?

A. No, sir, not at the time he was removed from the [fol. 120] city jail to the county jail, I wasn't.

Q. Did you see the defendant any more from that time —what time was that?

A. That was about 4 o'clock Sunday morning.

Q. All right. Did you see the defendant any more after that until he confessed that afternoon?

A. No, sir.

Q. That's all.

BY MR. GREAVES:

I don't want to ask him anything.

BY MR. GREAVES:

The defendant will take the stand.

BY THE COURT:

All right.

(Defendant's case)

WILLIAM SMITH, JR.,

the Defendant, after having been first duly sworn, was called as a witness in his own behalf and testified as follows:

DIRECT EXAMINATION

BY MR. GREAVES:

Is it all right if I stand this close to him? He talks so darn low I can't understand him.

BY THE COURT:

Oh, yes, that will be all right.

BY MR. GREAVES:

Q. Your name is William Smith, Jr?
A. Yes, sir, that's right.
Q. Open your mouth so the lady can hear you?
[fol. 121] Q. I have read to you back there in the back room a so-called confession from you. Did you make this confession?
A. No, sir, I didn't.
Q. I will ask you, this paper here, with your name to it, why did you tell them that you had committed this crime?
A. Because they threatened to bring me back to Canton and put me in the county jail and have a mob get me.
Q. Who told you that?
A. Mr. Snodgrass.

BY THE COURT:

I can't understand him, Mr. Greaves. I didn't understand what he said.

BY MR. GREAVES:

Q. I asked . . .
A. Mr. Snodgrass told me if I didn't say I did it him and the sheriff would bring me back to Canton and put me in the county jail and turn me over to a mob crowd.
Q. Now, are you telling the truth?
A. (No answer)
Q. Is that the reason you signed?
A. (No answer)
Q. Now, this—I read this thing to you. Did you—is that your language?
A. (No answer)
Q. Is that the kind of language you use?
A. I didn't know nothing about it.
Q. How far did you go in school?
A. Second grade.

[fol. 122] Q. Second grade is as far as you've been. Now, when they put you on this machine down there at Jackson—they put you on that, didn't they?

A. Yes, sir.

Q. When they got through with it, what did they tell you then?

A. The man what had me on the test, he told me I was lying. I went on back outside.

Q. You said the man who had you on the test said you were lying. Is that all?

A. Yes, sir, and he told me to go on back outside, after he got through with the test.

Q. And you tell the Court that the signing of this thing by you was not of your own free will but was done through fright and fear of being mobbed?

A. Yes, sir.

Q. That's all.

CROSS EXAMINATION

BY MR. WALLER:

Q. You looked at this statement, didn't you?

A. No, sir, I didn't.

Q. Mr. Greaves read it to you, didn't he, back there in the room awhile ago?

A. Yes, sir.

Q. You looked at your signature on it?

A. Yes, sir.

Q. You write your name, don't you?

A. Yes, sir.

[fol. 123] BY MR. WALLER:

He's answering "yes."

BY MR. WALLER:

Q. You signed it, didn't you?

A. I don't know, sir. I can't say.

Q. You can't say whether you did or not?

A. No, sir.

Q. But you do write your name, don't you?

A. Yes, sir.
Q. That's all.

BY MR. GREAVES:

That's all we have, Your Honor.

BY MR. WALLER:

I want to call Mr. Snodgrass, Your Honor.

BY THE COURT:

All right.

BY THE COURT:

Let the Defendant step down. Are you through with him now? Let the Defendant stop down if you are through with him.

(State of Mississippi Case)

MR. CHARLES SNODGRASS

having been previously sworn was recalled as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. Mr. Snodgrass, the statement has been made that you told the Defendant at or before the time he made the confession that you were going to put him in the Madison County jail and let a mob get to him. I ask [fol. 124] you whether or not you made such a statement?
A. No, sir, I did not.
Q. At any time?
A. I did not.
Q. To the Defendant or in the Defendant's presence?
A. No, sir.
Q. On Sunday, July the 30th, 1961, did you make any statement of words to that effect at any time, anywhere?
A. No, sir.
Q. That's all.

BY MR. GREAVES:

Stand aside.

BY MR. WALLER:

Your Honor, for the record the State now offers the statement into evidence.

BY MR. GREAVES:

We vigorously object to it, Your Honor.

BY THE COURT:

Where's Mr. Gilfoy, Mr. Waller?

BY MR. WALLER:

Sheriff Gilfoy?

BY THE COURT:

Yes,

SHERIFF J. R. GILFOY

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

[fol. 125] BY MR. WALLER:

Q. You are J. R. Gilfoy, sheriff of Hinds County?
A. Yes, sir.
Q. You were so acting as sheriff of Hinds County on the 30th day of July, 1961, were you not?
A. Yes, sir.
Q. I ask you whether or not Sheriff Billy Noble of Madison County requested your assistance in the investigation of a rape case here in Madison County?
A. Yes, sir.
Q. Did you undertake to assist him?
A. Yes, sir.
Q. At his request and under his direction?
A. Yes, sir.
Q. Did you meet Sheriff Noble and some other officers at the Highway Patrol headquarters which is located in

Hinds County, Mississippi on Sunday afternoon, July the 30th?

A. Yes, sir.

Q. I ask you whether or not the Defendant, William Smith, seated in the court room, made a confession or a statement at the time you were present?

A. He did.

Q. Prior to his making the statement I will ask you whether or not he was advised that any statement which he did make could be used against him in a court of law?

A. Yes, sir.

Q. What promises of reward were given to the Defendant to induce him to make the statement?

[fol. 126] A. None.

Q. What promises or threats of violence or punishment were offered him if he did not make a statement?

A. None whatever.

Q. From your observation of the circumstances there, I will ask you whether or not the statement that he did make was free and voluntary?

A. It was.

Q. And I will ask you how the statement was—wait just a minute. I hand you a two page typewritten document which is the statement he made and ask you to read the top line there, top two or three lines of the statement.

A. (Reading "I, William Smith, ...

Q. Just read it to yourself. That says, sheriff, that you were present?

A. I was.

Q. Turn over on the second page. You signed it as a witness, did you not?

A. Yes, sir.

Q. And I ask you whether or not William Smith signed that statement in your presence?

A. He did.

Q. Was the statement read to him before he signed it?

A. Yes, sir, it was.

Q. Was the question asked him whether or not he understood the statement?

A. Yes, sir.

[fol. 127] A. Yes, sir.

Q. And how did he answer?

A. Yes.

Q. I believe that's all.

CROSS EXAMINATION

BY MR. GREAVES:

Q. Mr. Gilfoy, isn't it a fact that they took this boy to the Highway Patrol down there and put him on the lie detector?

A. Yes, sir.

Q. Now, when he got off there, isn't it a fact that our good sheriff here told him that the instrument showed he was a liar?

A. Didn't hear that.

Q. Well, if our good sheriff says that he told him that he was lying and he had better confess to this crime, then you would say he said so, wouldn't you?

A. Yes, sir, if he said he did, I would, but I wasn't present when he . . . .

Q. You weren't present when he told him that?

A. No, sir.

Q. That's all.

BY THE COURT:

All right.

REDIRECT EXAMINATION

BY MR. WALLER:

Mr. Greaves, I want to ask him one other question.

Q. Mr. Richardson of the highway department and [fol. 128] yourself and Mr. Sam Ivy and Mr. Charley Snodgrass and Mr. Billy Noble, the five of you were present in the room?

A. Yes, sir.

Q. Do you recall whether or not any one else was present at the time and place he made the confession?

A. Is Mr. Richardson the young man who took the statement?

Q. Yes, sir.

A. That's all I know of.

Q. All right. Thank you, Sheriff. You may stand aside, Sheriff.

OFFER OF CONFESSION IN EVIDENCE AND ADMISSION THEREOF

BY MR. WALLER:

The State now offers the statement in evidence.

BY THE COURT:

Do you object to it?

BY MR. GREAVES:

Absolutely.

BY THE COURT:

Let the record show, Mrs. Welborn, that before the Court admitted or passed on the alleged confession that the Court carefully read the statement and after having observed that Mr. Gilfoy's name was on there, Mr. Gilfoy being the sheriff of Hinds County, and Mr. Gilfoy not having testified, as is the Court's duty to hear everybody that was present when the question of the admissibility of the confession was raised, did take a recess of about nearly an hour in order for Mr. Gilfoy to come from Jackson. Now, after Mr. Gilfoy having testified and all the rest of the men who were present on the occasion having testified and the Court having heard the Defendant on this one issue and observing him, his de- [fol. 129] meanor and manner, the Court is of the opinion that the confession is legally admissible and so holds and the objection is overruled.

BY THE COURT:

All right, gentlemen, are you ready for the jury to come back now? Are you ready to proceed?

BY MR. WALLER:

Yes, sir.

BY MR. GREAVES:

Note our objection to that.

JURY RETURNED

(By order of the Court the jury returned to the court room and the following proceedings were in the presence of the Court and in the presence of the jury.)

MR. CHARLES SNODGRASS

having been previously sworn, was recalled as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. Mr. Snodgrass, were you present and assisting Sheriff Noble in the investigation on Sunday, July the 30th, in the presence of the Defendant, William Smith?

A. Yes, sir.

Q. I ask you whether or not William Smith made any statement with reference to his guilt or innocence in this alleged rape?

A. Yes, sir, he did.

Q. Were you present at the time he made those [fol. 130] statements?

A. Yes, sir.

Q. I ask you what promises of reward or threats of violence were made against him or in his presence prior to the time that he made that statement?

A. There were no threats made.

Q. What further advice, if any, was he given in your presence?

A. He was told that he had the right to have an attorney present.

Q. What use, if any, was he advised that any statement that he might make would be put to?

A. He was advised that any statement he made could be used against him in a court of law.

Q. Were you present—did he make a statement after receiving that advice?

A. Yes, sir.

Q. Was that statement reduced to writing?

A. Yes, sir.

Q. How?
A. Typewriter.
Q. Did you see the statement after it was typed up?
A. Yes, sir.
Q. How many pages is it?
A. Two typewritten pages, single spaced.
Q. Is that the statement which you have in your hand?
A. Yes, sir.
[fol. 131] Q. I ask you whether or not in your presence this statement was read back to the Defendant prior to the time that he signed it?
A. Yes, sir.
Q. What question was asked the Defendant after the statement was read to him?
A. He was asked if the statement was true to the best of his knowledge.
Q. And what did he answer?
A. He answered that it was.
Q. I ask you whether or not he then signed the statement?
A. Yes, sir, he did.

BY MR. GREAVES:

Your Honor, I am going to object to the introduction of it. Just let the record show.

BY THE COURT:

All right. The objection is overruled.

BY MR. WALLER: (continuing)

Q. You were present when he signed it?
A. Yes, sir.
Q. This is the original of the typewritten statement that was made in your presence?
A. Yes, sir.

BY MR. WALLER:

If it please the Court, I offer the statement of William Smith, Jr. into evidence.

[fol. 132] BY THE COURT:

All right. Over objection of Mr. Greaves, representing the Defendant, it may be received as an exhibit.

(Exhibit received in evidence and marked by the court reporter as State Exhibit 7 to the testimony of Witness Snodgrass.)

[fol. 133] BY MR. WALLER:

If it please the Court, I will ask the witness to read the statement to save time, if I may.

BY THE COURT:

Mr. Waller, of course, that's all right. The jury will have that statement. I am going to let you proceed if you want to but don't you think since they will have it they can read it themselves.

BY MR. WALLER:

Just for the record, Your Honor, I would like to ask the witness two or three other questions about the statement.

BY THE COURT:

All right.

BY MR. WALLER:

Q. I ask you whether or not William Smith, Jr. admitted the rape of Aleece Gober in the statement?
A. Yes, sir, he did.
Q. Did he tell you how it happened?
A. Yes, sir.
Q. Did he tell you what weapon, if any, he used?
A. Yes, sir.
Q. All right. Now, did he tell you generally where it happened?
A. Yes, sir.
Q. All right, now, you spoke earlier in your testimony about recovering a pair of under pants that was the property of the victim, Aleece Gober?
A. Yes, sir.

[fol. 134] Q. Did he point out to you the place where you found those under pants as being the place where the rape took place?

A. No, sir, he didn't point the place out.

Q. Did he tell you where it was?

A. Yes, sir.

Q. Now, after he had signed this statement, I will ask you whether—what happened then in the presence of the Defendant in the further investigation of this case?

A. After he signed the statement he was brought back to Canton, Mississippi, and carried to the sawmill quarters in Canton where he lived and the knife . . . .

Q. Just a minute, Mr. Snodgrass. I will ask you what, if anything, he told you in reference to the knife he used?

A. He told us where the knife could be located.

BY MR. GREAVES:

Your Honor, again I object on the ground that I still maintain that the confession was utterly worthless and that any information received therefrom is still worthless.

BY THE COURT:

All right. You may make your point in the record. The objection is overruled. The Court is allowing it to go in. The objection is overruled.

A. He told us where the knife and the watch could be found.

Q. Did he describe the knife to you before you got to his house?

[fol. 135] A. Yes, sir.

Q. Was this act on his part voluntary or did you all force him to do it?

A. Voluntary.

Q. Did he describe—I hand you State Exhibit number 2 For Identification and ask you if generally he described that knife before you got to his house?

A. Yes, sir.

Q. All right. Did you have a search warrant to search his house.

A. The sheriff got a search warrant, yes, sir.

Q. Was he present when you recovered the knife from the wall of his home as you have already testified?

A. Yes, sir.

Q. And did he tell you where he put the knife—how he got it in the wall?

A. Yes, sir.

Q. How?

A. Through a knot hole in the partition wall.

Q. After you got your hands on that knife, what questions, if any, did you ask him?

A. Asked him if that was the knife he told us about.

Q. What did he say?

A. He said it was.

BY MR. WALLER:

If it please the Court, I offer this knife into evidence.

BY THE COURT:

All right. It may be received.

[fol. 136] (Exhibit received in evidence and marked by the court reporter as State Exhibit 2 to the testimony of Witness Snodgrass.)

[fol. 137] BY MR. WALLER:

Q. You had other information at that time, description-wise as to other property I believe you testified to. Is that right?

A. Yes, sir.

Q. What?

A. A watch.

Q. What kind of a watch?

A. It was a Timex watch.

Q. Was that description given to you by the Defendant voluntarily?

A. Yes, sir.

Q. I ask you whether or not you recovered the watch, if so, where?

A. The watch was recovered from his house.

BY MR. GREAVES:

Your Honor, again I object to this. In the beginning here it was just merely for identification. I was objecting to it then but it was just for identification. Again I object to it on the ground that the information that he received by this watch from the confession is void. The confession itself is worthless. Please note that.

BY THE COURT:

All right. Overrule the objection.

BY MR. WALLER: (continuing)

Q. Did you recover a watch?
A. Yes, sir.
Q. And the watch we have discussed before is State [fol. 138] Exhibit 1 for identification to your testimony. Is that the watch that you recovered?
A. Yes, sir.
Q. Was the Defendant present at his house at the time you recovered the watch?
A. Yes, sir.
Q. I ask you whether or not you asked him any questions about the watch after you got your hands on it?
A. I asked him if this was the watch that he had told me about and he stated that it was.

BY MR. WALLER:

We are going to pass this for the time being.

BY THE COURT:

All right.

BY MR. WALLER:

Q. Now, do you know—did the Defendant tell you what kind of pants he was wearing at the time this altercation took place?
A. Yes, sir.
Q. What kind?
A. Khaki.
Q. All right. In his presence, at his house, I will ask you whether or not he made any voluntary declaration

in reference to the pants he was wearing the preceding night when this thing took place?

A. Yes, sir.

Q. Did he identify and recover in your presence and in his presence the pants that he wore?

[fol. 139] A. Yes, sir.

Q. I will ask you whether or not those are the same pants we referred to earlier in your testimony which are now marked For Identification, State Exhibit 5 to your testimony?

A. Yes, sir.

Q. I would like to ask you to open that bag and pull those pants out and tell me whether or not they are in the same condition now as they were when you recovered them? That's the FBI seal that you are tearing on that envelope, is it not?

A. Yes, sir.

Q. Do you have your mark on them?

A. Yes, sir.

Q. Those—I don't want to lead you now, but just tell the jury, you took the pants in your possession, just for the record, and tell them where they have been since that time.

A. The pants were taken by me and sealed and sent to the FBI laboratory.

Q. And returned by whom to whom?

A. Returned from the FBI laboratory to me by registered mail.

Q. And you opened the box here in the court room this morning. Is that the way they were returned to you?

A. Yes, sir.

Q. And you can testify as a matter of fact that their condition now is relatively the same?

A. Yes, sir.

Q. I will ask you what questions you asked the De-

[fol. 140] fendant about these pants after he gave them to you or pointed them out to you at his house there on the afternoon of July the 30th?

A. I asked him if these were the pants he wore on the preceding night and he stated that they were.

BY MR. WALLER:

If it please the Court, I offer these pants into evidence.

BY THE COURT:

All right. They may be received.

(Exhibit received in evidence and marked by the court reporter as State Exhibit 5 to the testimony of Witness Snodgrass.)

[fol. 141] BY MR. WALLER:

Q. I want to ask you about this blouse and shorts. The Blouse is marked State Exhibit 4 For Identification and the shorts are marked State Exhibit 6 for Identification. I ask you from whom did you obtain possession of these, what officer gave you these two garments?

A. No officer. Aleece Gober gave them to me.

Q. All right. They came off of her?

A. From her, yes, sir.

Q. They are in a sealed envelope, the same as the pants?

A. Yes, sir.

Q. I believe that's all.

CROSS EXAMINATION

BY MR. GREAVES:

Q. Mr. Snodgrass, you tell the jury that you and our sheriff and the other officers treated this man just as gently as if he were a lamb?

A. We treated him as we treat any other prisoner, sir.

Q. Isn't it a fact, Mr. Snodgrass, when you had him down there you told him that if he didn't confess to this crime you would bring him back here to Canton and put him in the county jail and let a mob have him?

A. No, sir, that's not true.

Q. That's not true. That's all.

BY MR. WALLER:

You wait outside, Mr. Snodgrass.

[fol. 142] MR. BILLY NOBLE

having been previously sworn, was recalled as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. Did you—the night at Mr. Craft's house you testified that you talked to Aleece Gober?

A. Yes, sir.

Q. What type of clothes did she have on?

A. She had on a white blouse and a pair of dark blue shorts.

Q. I hand you a blouse and ask you whether or not that is the blouse she had on that night?

A. Yes, sir.

Q. All right. Did it have a collar on it or not?

A. The collar had been torn off.

Q. The collar had been torn off?

A. Yes, sir.

BY MR. WALLER:

If it please the Court, I offer this blouse belonging to Miss Gober into evidence.

BY THE COURT:

All right.

(Exhibit received in evidence and marked by the court reporter as State Exhibit 1 to the testimony of Witness Noble.)

[fol. 143] BY MR. WALLER:

Q. You were present when that blouse was recovered from Miss Gober?

A. Yes, sir, it was given to Mr. Snodgrass by Miss Gober—and myself.

Q. Were you present when she gave you the shorts?

A. Yes, sir.

Q. All right. I hand you a pair of dark colored shorts and ask you if those are the shorts that the victim was wearing the night that you talked to her?

BY MR. GREAVES:

Your Honor, I object to that. He doesn't know whose shorts those are.

A. These are the shorts she had on in my presence when I went to the scene and talked to her on the night of the crime.

BY THE COURT:

I think that's all right, Mr. Greaves. I overrule the objection.

BY MR. WALLER: (continuing)

Q. They were handed over in your presence by Miss Aleece Gober?

A. Yes, sir.

BY MR. WALLER:

If it please the Court, I offer these shorts into evidence.

(Exhibit received in evidence and marked State Exhibit 2 to the testimony of Witness Noble.)

[fol. 144] BY MR. WALLER:

Your witness.

CROSS EXAMINATION

BY MR. GREAVES:

Q. I believe after you got the Defendant in your custody you carried him to the Highway Patrol down to Jackson?

A. Yes, sir.

Q. And down there you put him on the lie detector down there?

A. Yes, sir.

Q. Isn't it a fact that you told the Defendant that the detector showed that he was lying?

A. After . . . .

Q. That he might just as well confess to the crime?

A. After I conferred with Mr. Sam Ivy, he told me of his findings on the polygraph machine I made that statement to him.

Q. You made that statement to him that he might just as well tell the truth?

A. Yes, sir.

Q. That's all.

BY MR. WALLER:

Stand aside, Billy.

JAMES MYERS

having been previously sworn, was recalled as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

[fol. 145] Q. You are the same James Myers who testified in this case earlier today?

A. Yes, sir.

Q. You testified, James, that the Defendant took a Timex wrist watch off of you?

A. Yes, sir.

Q. The night that this happened. I hand you State Exhibit 1 to the testimony of Mr. Snodgrass and ask you to examine that watch. Is that your watch?

A. Yes, sir.

Q. Is this the watch that you had on that the Defendant took off of you the night that this happened?

A. Yes, sir.

Q. Have you seen it since he took it?

A. Mr. Snodgrass brought it out to the house and showed it to me.

Q. Did you identify it then?

A. Yes, sir.

MR. WALLER:

If it please the Court, I offer the watch into evidence, as an exhibit to this witness's testimony.

BY THE COURT:

All right. It may be received.

(Exhibit received in evidence and marked by the court reporter as State Exhibit 1 to the testimony of Witness Myers.)

[fol. 146] CROSS EXAMINATION

BY MR. GREAVES:

Q. Mr. Myers, how can you identify that watch as being your property?

A. Well, this same band wasn't on there when I bought it. That's a new band on it. And it wasn't broken—either one.

Q. Just by the band on there now is not the band on there the night it was taken away from you?

A. Yes, sir, that's the same band that was on there.

Q. This same band was on there the night you say it was taken away from you?

A. Yes, sir.

Q. Now, isn't it a fact, that thousands and thousands of watches are exactly like that and with the same bands on it in this country?

A. Not where I bought that one, sir.

Q. I asked you, isn't it a fact, there are hundreds of watches like that and watches with the same band on it. If you put another beside it like that, you couldn't tell one from another, could you?

A. Yes, sir, I could.

Q. How could you tell?

A. Because on the front of it. Right down there at one hundred it has got a black dot.

Q. It's got a black dot but don't the rest of them—a lot of them have a black dot?

[fol. 147] A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. How are you sure of that?

A. (No answer)

Q. Did you put it on there?

A. No, sir, I didn't. Mr. Edmonds said it was made on there like that.

Q. Made on there. There are hundreds of them that got the same dot, the same marking. You are positive, though, that's your watch?

A. Yes, sir.

Q. That's all.

REDIRECT EXAMINATION

BY MR. WALLER:

Q. James, for the record, you bought the watch with another band on it. Is that correct?

A. Yes sir.

Q. Then, as I understand your testimony, you bought this band and put it on your watch after you bought the watch?

A. Yes, sir.

Q. You had this band and this watch on the night that you were robbed?

A. Yes, sir.

Q. That's all.

ANTHONY O'TOUSA

after having been first duly sworn, was called as a witness by the State of Mississippi and testified as follows:

[fol. 148] DIRECT EXAMINATION

BY MR. WALLER:

Q. You are Anthony O'Tousa of Washington, D.C.?

A. Yes, sir.

Q. By whom are you employed, Mr. O'Tousa?

A. I am currently employed by the Federal Bureau of Investigation in Washington, at the FBI laboratory.

Q. How old are you, sir?

A. Thirty five years old.

Q. How long have you been employed by the Federal Bureau of Investigation?

A. Seven years.

Q. Prior to becoming employed by the FBI—that's permissible to say FBI, isn't it.

A. Yes, sir.

Q. What formal education or training did you received that lead you into your work with the FBI?

A. I am a graduate of the University of California, Los Angeles, where I took a baccalaureate degree in the field of biology and the related field of chemistry.

Q. That was a four year college course, was it not?

A. Yes, sir.

Q. After you became associated with the FBI seven years ago, what field of work have you followed?

A. I have been assigned to the FBI Laboratory where I make examinations relating to evidence concerning hairs and fibers.

Q. Have you received any further specialized training in the scientific field since you have been with the FBI? [fol. 149] A. Yes, sir, for a period of one year I underwent a period of training under qualified examiners until such time as I was able to conduct independent examinations.

Q. In your work from day to day or week to week in Washington with the FBI, what type of examinations do you make on clothes for foreign matter, if any?

A. I devote my full time to the examination of clothing for the hairs and fibers evidence.

Q. After you recover a foreign object or objects on clothing, what procedure do you follow to further analyze that body or object.

A. My work entails the identification of the object and then the comparison of that object with the known object.

Q. In other words that is done how, with what device or instrument?

A. By the use of the microscope.

Q. You use colors and textures and all sorts of devices?

A. The hair examination it's a matter of first identifying the hair with the use of the research microscope. Then the comparison is made by use of the comparison microscope which is two research microscopes mounted with a common eye piece so that you can view each object simultaneously.

Q. Do you devote your entire time to this field of scientific work?

A. Yes, I do.

Q. I ask you whether or not you are called upon to testify in various courts about the country as an expert in this field?

[fol. 150] A. Yes, sir; I am.

Q. All right. Are you recognized in all courts where you have appeared as an expert in your field?

A. I am.

Q. I ask you whether or not you received certain evidence at your office in Washington from Officer Charles Snodgrass of the Mississippi Highway Safety Patrol relating to a suspect named William Smith, Jr?

A. Yes, sir, I did.

Q. In particular, sir, what objects or garments did you examine?

A. I examined the trousers of William Smith.

Q. I hand you a pair of pants that's marked State Exhibit 5 to the testimony of Officer Snodgrass and ask you to look at them and tell the jury whether or not those are the pants which you examined?

A. Yes, sir, these are the pants that I examined. They bear my identifying mark on the waist band.

Q. For the benefit of the jury, could you give them the date that you made your examination?

A. Yes. I made my examination on August the 3rd, 1961.

Q. On August the 3rd, 1961?

A. Yes, sir.

Q. What did you recover, from the pants, if anything?

A. In making my examination I recovered a single light brown pubic hair of Caucausian origin which had become caught in the zipper of these trousers.

[fol. 151] Q. All right. Would you stand up, sir, and face the jury? Hold the pants in front of you and show the jury where this hair was.

A. The hair was caught in the zipper slide right in that position there (pointing). When I received the trousers the zipper was down and the hair was caught in that particular location. I removed that hair and I placed it on the glass microscope slide for examination.

Q. Now, do you have that slide with you?

A. Yes, sir, I believe it's in the box. (looking)

Q. All right, sir, you may go ahead and look for it.

A. This is the slide containing the slight brown pubic hair Caucasian origin which I removed from this pair of trousers.

Q. Let me ask you to definite two words now, just to be sure that I understand you. The word "Caucasian" means white?

A. Yes, sir.

Q. American. And the word "pubic" means what?

A. From the pubic area, from the crouch area of the individual.

Q. It's what color?

A. Light brown.

Q. All right. Now, proceed, sir

A. Upon continuing with the examination, as I explained before, I examined this particular hair under the research microscope. Then I made a comparison of this particular hair with known hairs from the pubic area of Aleece Gober and in making this comparison that this [fol. 152] particular hair, this light brown public hair of Caucasian origin matched the microscopic characteristic of the known pubic hairs from Miss Gober and I then concluded that this light brown pubic hair of Caucasian origin either originated from Aleece Gober or from an individual whose public hairs would possess the same individual microscopic characteristics.

Q. Microscopic characteristics of the hair are what?

A. Would you like for me to give a run down on the miscrospic characteristics of hair?

Q. Yes, sir.

Q. Let's suppose that you were to take the common ordinary pencil in explaining microscopic characteristics, you would have the outer portion of the pencil would refer to the cuticle of the hair. Beneath the cuticle of the hair you have a structure known as the medulla of the hair. The lead portion of the pencil, the innermost portion, would refer to the cortex of the hair. Now, it is the individual microscopic characteristics of these particular hair layer structures that we are concerned with in our comparison. In this particular case, the light brown Caucasian pubic hair, the individual structures, that is, the formation of the cortex, the structures in the medulla which contain the pigmentations which impart the color of the hair matched, were identical, as the known pubic hairs from Miss Gober.

Q. I ask you whether or not microscopically according to your study you can distinguish between a negroid hair and caucasian hair?

[fol. 153] A. Yes, sir, it is definitely possible to differentiate between the three major races. That, too, depends on the individual microscopic characteristics. In this case, the very fine even distribution of the pigment, the very light color to the pigment, the very fine structure of the hair itself, the very evenness of the calibre of the hair shaft are all indications of a Caucasoid or Caucasian type hair.

Q. As an expert based upon your examination, you would say that the hair you took from the zipper of William's Smith's pants was definitely a white hair. Is that correct?

A. Definitely from an individual of the white race.

Q. ~~In the comparison that you might with the hair that~~ — let me ask you this. (Strike that and take this) You have a hair in that slide, do you not?

A. That's right. That's the known slide there of the . . . .

Q. Of Aleece Gober?

A. Right.

Q. There's a hair in there or some strands of hair?

A. Yes, sir.

Q. Now, how many times approximately, just for the benefit of myself and the jury, how many times did you magnify this hair to pick up all those characteristics that you spoke of?

A. That was magnified approximately one hundred diameters.

Q. One hundred times?

A. That's right, one hundred times.

[fol. 154] Q. The size?

A. That's right.

Q. And this hair that you recovered from the zipper and you found the two hair characteristics or the characteristics of the two hairs very similar. Is that correct?

A. That's correct. I found the same microscopic characteristics in each of the hairs.

Q. You found the same color?

A. That's correct.

Q. You found the same pigmentation, you might say racial or velocity . . . .

A. The same diffuse evenness of the pigmentation, yes, sir.

Q. Yes, sir. Then in your opinion as an expert, I will ask you whether or not the hair—the hairs which you took out of the zipper of William Smith's pants and Aleece Gober's hair are the same hair?

A. As I stated, the hair that I removed from the zipper of the trousers could have come from Aleece Gober. Due to the fact that hairs possess limited characteristics for comparison, it is not possible to state that a hair positively originated from a particular source. The most that we can say is that the hairs possess similar microscopic characteristics. That they originated either from a particular person or from another individual who has the same particular microscopic characteristics in his hair.

Q. All right. I want to ask you some negative propositions. I ask you, the hair that came out of the zipper [fol. 155] did not come from a negro man or a negro woman.

A. That's true. It did not come from a negro.

Q. You say that as a matter of expert knowledge.

A. That is a matter of my knowledge, yes, sir.

Q. And you will say that the hair that you recovered is the same color and texture as the hair, the known hair of Aleece Gober?

A. Yes, sir.

Q. That's all.

CROSS EXAMINATION

BY MR. GREAVES:

Q. That hair from the zipper and the hair from Aleece Gober you say have a similarity. Is that it, sir?

A. I say that they possess the same microscopic characteristics, yes, sir.

Q. Characteristics?

A. That's right, sir.

Q. The hair that came out of the zipper could belong to any other woman besides Miss Gober having the same characteristics. Is that it?

A. If the other woman had the same characteristics, yes. It would come from another woman who came in contact with those trousers. It would have to come from one other woman with the same characteristics, yes, sir.

Q. Then you will not tell this jury that the hair found in the britches there was Miss Gober's hair?

A. No, sir, it is not possible to state positively.

Q. I see. That's all.

[fol. 156] BY MR. WALLER:

You are free to leave. Thank you, sir.

A. You are welcome.

(Witness excused)

(Witness recalled)

BY MR. WALLER:

I offer these two slides in evidence, if the Court please.

BY THE COURT:

All right.

(Exhibits received in evidence and marked as State Exhibit 1 and State Exhibit 2 to the testimony of Witness O'Tousa.)

[fol. 157] (Witness excused)

JAMES MATLOCK

after having been duly sworn, was called as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. What is your name?

A. James Matlock.

Q. M-a-t-l-o-c-k (spelling)?

A. Yes, sir.

Q. James, I am going to have to hear you back here. Can you speak up?
A. Yes, sir.

BY THE COURT:

What did he say his name was?

BY MR. WALLER:

Matlock. M-a-t-l-o-c-k (spelling)

BY THE COURT:

All right. Speak out, James, so all of us can hear you.
A. Yes, sir.

BY MR. WALLER:

Q. Where do you live, James?
A. Mr. A. B. Mansel's place.
Q. Where does Mr. A. B. Mansel live?
A. Where he lives at?
Q. Yes.
A. Well, you go to 51 and your turn back off to your right out there.
[fol. 158] Q. North of Canton, off to the east of 51 highway?
A. Yes, sir.
Q. Do you know where the Finney Road is?
A. Yes, sir.
Q. Do you know what you were doing on Saturday night, July 29th, 1961?
A. Yes, sir.
Q. What?
A. July 29th.
Q. What?
A. On Friday night?
Q. That was on Saturday night.
A. Yes, sir. On that Saturday night I was—I left out of the oil mill quarters about 11 o'clock.

BY THE COURT:

Speak a little slower, James, because we are having a little trouble hearing you.
A. Yes, sir.

BY MR. WALLER:

Q. Were you riding or walking?
A. Riding.
Q. Were you driving or riding?
A. Sir?
Q. Were you driving a car?
A. Yes, sir.
Q. Whose car?
A. Driving my daddy's car.
Q. Driving your daddy's car?
[fol. 159] A. Yes, sir.
Q. Who was in the car with you?
A. Me and William Smith and Garrison and Richard Leonard.
Q. You and William Smith and who?
A. Richard Leonard.
Q. Richard who?
A. Richard Leonard.
Q. Richard Nunnery?
A. Richard Leonard.
Q. Donald?
A. Richard Leonard.
Q. And who else?
A. That was all.
Q. What?
A. That was all in the car with me.
Q. But you didn't know him?
A. That was all that was in the car with me.
Q. Those were the only ones?
A. Yes, sir.
Q. You left out of the oil mill quarters?
A. Out of the oil mill quarters, yes, sir.
Q. Where did you go?
A. Went over to O. T.'s house. O. T. Griffin's house, out there on Mr. Tony James' place.
Q. What did you do when you got there?
A. I got there and Richard Leonard got out of the car.
[fol. 160] Q. Wait a minute. Start over again.
A. We got out there and Richard Leonard got out of

the car. That was one of the boys who was in the car with me.

Q. All right. This third boy got out of the car and left you and . . . .

A. No, sir, the second boy. After we got down there two got out.

Q. Who got out now?

A. Richard Leonard and my daddy, Eicie Matlock.

Q. That's E-i-c-i-e (spelling)?

A. Yes, sir, that's the way he spells it.

Q. They got out of the car?

A. Yes, sir.

Q. That left who in the car?

A. That left me and William Smith.

Q. All right. What do you call William?

A. Sir?

Q. What do you call William?

A. Soo Cow.

Q. Soo Cow?

Q. Do you see him in the court room?

A. Yes, sir, I saw him here today.

A. Yes, sir.

Q. Do you see him sitting over there?

A. Yes, sir, I see him over there.

Q. Is that him?

A. Yes, sir.

Q. It was about 11 o'clock Saturday night?

[fol. 161] A. Yes, sir.

Q. All right. What happened then?

A. After that me and him left coming on back down the road. We was about to get to Mr. Tony James' house . . . . .

Q. Wait a minute. You all left and came on back down the road?

A. Down the road, yes, sir.

Q. Which way did you come?

A. Come to the highway, 51 highway.

Q. What road were you on?

A. Finney Road.

Q. On the Finney Road?

A. Yes, sir.

Q. Do you know where Mr. Ernest Craft lives?

A. Yes, sir, I know where he lives at.

Q. Do you know what direction Finney Road runs in, north or south or east or west?

A. It was running—going north. It's a little gravel road.

Q. Wait a minute now.

A. Sir?

Q. You were coming back on to highway 51 on Finney Road?

A. Yes, sir, Finney Road.

Q. Is Mr. Craft's house between you and the highway?

A. Between me and the highway?

Q. At that time? You and William Smith were riding along in the car.

[fol. 162] A. Yes, sir. Mr. Craft's house was betwist us.

Q. Betwist you and the highway?

A. Yes, sir.

Q. So you are east of Mr. Craft's house—do you agree with that?

A. East?

Q. Yes.

A. Yes, sir.

Q. You were driving the car?

A. Yes, sir, I was driving the car.

Q. Some time after 11 o'clock?

A. Yes, sir, after 11 o'clock.

Q. What did William Smith say to you, if anything?

A. Coming on back, he was telling me he was going to get some money.

Q. Wait a minute. Coming on back he said what?

A. He was supposed to have some money. He was going to get some money.

Q. He was going to get some money?

A. He had to have some money but who he was talking about I didn't know.

Q. Say that again.

A. He said he was supposed to have some money. He was going to get the money from—I don't know who he was going to get the money from.

Q. You said you was supposed to have some money?

A. No, sir. Said he had some money—he was going to get it and we would divide it.

[fol. 163] Q. He didn't have any money but if he could get some you all would divide it?

A. Yes, sir, that's what he said.

Q. All right. Do you know where he intended to get the money from?

A. No, sir, I don't know where he intended to get the money from.

Q. Did he get out of the car?

A. Yes, sir, he got out of the car.

Q. You know where Mr. Ernest Craft's place is?

A. Yes, sir.

Q. Were you on Finney Road when he got out of the car?

A. Yes, sir, on Finney Road.

Q. Was Mr. Craft's house between you and the highway when he got out of the car?

A. He got out of the car down below Mr. Tony James. Mr. Craft's house is up on the hill there.

Q. Mr. Craft's house is up on the hill?

A. Yes, sir.

Q. Where he got out of the car?

A. Yes, sir.

Q. Do you know where Mr. Grady Morgan's dairy farm is?

A. Yes, sir, I know where that is.

Q. Is that a gravel road or a paved road that runs by there?

A. That's a gravel road that runs through there.

[fol. 164] Q. Where does that gravel road run into the Finney Road?

A. Around there—I don't know where it run out at. We was on this Finney Road, the road you turn off the right on this gravel road.

Q. The gravel road that goes in the front of Mr. Grady Morgan's house runs off the Finney Road.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. All right. Were you anywhere close to that gravel road that runs north by Mr. Grady Morgan's house when he got out of the car?

A. Yes, sir.

Q. You were close to that road?
A. Yes, sir, we was close to that road.
Q. After 11 o'clock?
A. Yes, sir, after 11 o'clock.
Q. What was the last thing he said to you when he got out?
A. When he got out?
Q. Yes.
A. When he got out he said he was supposed to have some money. He was going to get the money and divide it.
Q. He said he was going after some money?
A. He said he was going to get it and divide it. He didn't say where he was going to get it at.
Q. Let me get this right. He said, "I don't have [fol. 165] any money."
A. No, sir.
Q. "I am going to get some money."
A. No, sir, didn't say that.
Q. All right. What did he say?
A. He said, "If these folks have any money, I am going to get the money and divide it."
Q. If these folks have any money, I am going to get their money . . . . . .
A. Yes, sir.
Q. . . . . and divide it with you?
A. Yes, sir, that's what he said.
Q. All right. Who were these folks?
A. I don't know who the folks was.
Q. Did you see any other cars around there?
A. When we started going to O. T.'s house I saw a car on this gravel road, right off the Finney Road, this gravel road.
Q. You saw a car up the gravel road?
A. Yes, sir.
Q. That runs off the Finney Road?
A. Yes, sir, off the Finney Road.
Q. Do you know what kind of car it was?
A. No, sir, I don't know what kind of car it was.
Q. Do you know who was in it?
A. No, sir, I don't know who was in it.

Q. That's all he said when he left?
A. That's all he said.
[fol. 166] Q. If these folks have any money I am going to get it and divide it with you?
A. Yes, sir, that's what he said.
Q. Did you have your lights on or off?
A. Off.
Q. Had them on?
A. Off.
Q. Did you wait for him?
A. I waited about five minutes. I didn't tell him I was going to wait any time or not. I waited about five minutes.
Q. You waited about five minutes?
A. Yes, sir.
Q. Then what did you do?
A. I went back and got my daddy and Richard Leonard.
Q. You went back out there and got your daddy?
A. And Richard Leonard.
Q. Weren't you supposed to wait for William Smith?
A. He didn't tell me to wait.
Q. You didn't wait?
A. I waited, sir, about five minutes then I went back over there and got my daddy and Richard.
Q. Went back and got your daddy and Richard?
A. Yes, sir.
Q. Then what did you do?
A. Come home.
Q. Did you see Richard any more that night?
A. Richard?
[fol. 167] Q. I mean William Smith.
A. I didn't see William no more until Sunday morning after I come up to the city jail.
Q. You don't know what William did?
A. I don't know what he did.
Q. But you left?
A. Yes, sir, I left.
Q. That's all.

CROSS EXAMINATION

BY MR. GREAVES:

Q. I believe you are indicted with Smith over here for armed robbery, aren't you?

A. Sir?

Q. Aren't you indicted for armed robbery?

A. That's what they say.

Q. So they say?

A. Sir?

Q. I said, you said they say you are indicted for armed robbery?

A. Yes, sir.

Q. And isn't it a fact that you have been used here as a witness in this case against this man because you have been promised if you would get here and tell things you would be given a lighter sentence?

A. Sir?

Q. Ain't that right?

A. Sir?

Q. Haven't you been promised for your testimony [fol. 168] here against this man, haven't you been promised that you wouldn't be put in the electric chair, I mean the gas chamber for it?

A. Say that again.

Q. I say, for your testimony here against this man haven't you been promised if you testify against him you wouldn't received a bad sentence?

A. (No answer)

Q. Isn't that true?

A. Yes, sir.

Q. That's all.

REDIRECT EXAMINATION

BY MR. WALLER:

Q. Matlock . . .

A. Sir?

Q. Have I promised you anything if you would get on the witness stand and testify?

A. No, sir, you haven't.

Q. Has Mr. Fancher promised you anything?
A. No, sir.
Q. Well, who's promised you something?
A. Ain't nobody promised me nothing.
Q. Did you understand what Mr. Greaves said?
A. No, sir, I couldn't understand him.
Q. Mr. McCool there is your lawyer, isn't he?
A. Yes, sir.
Q. Nobody has promised you anything to get up here and tell the truth, have they?
A. Tell the truth?
[fol. 169] Q. Have I promised you anything?
A. Ain't nobody promised me—you ask for the truth and I told you the truth.
Q. Didn't I tell you to get up here and tell the truth?
A. Tell the truth, no, sir.
Q. Are you telling the truth?
A. I am telling the truth.
Q. Has Mr. Fancher promised you anything . . . . .
A. No, sir.
Q. . . . . if you will testify in this case?
A. No, sir.
Q. You now say that nobody has promised you anything? Is that righ ?
A. Yes, sir.
Q. You understand what I am talking about?
A. Yes, sir, I understand what you are talking about now.
Q. You are in jail, aren't you?
A. Yes, sir, I am in jail.

RECROSS EXAMINATION

BY MR. GREAVES:

Q. In fact, you don't know what you are testifying to, do you?
A. That's right.
Q. In other words, you haven't got sense enough to testify, have you?
A. (No answer)

[fol. 170] BY THE COURT:

Let's have order.

BY MR. WALLER:

You can go on back there.

BY THE COURT:

All right. Who do you want, Mr. Waller?

BY MR. WALLER:

Allece Gober.

(The court room was again cleared in the same way it previously was cleared when this witness testified.)

ALEECE GOBER

having been previously sworn, was recalled as a witness by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are the same Aleece Gober that testified earlier in this case?

A. Yes, sir.

Q. I hand you a pair of lady's shorts marked Exhibit 2 to the testimony of Sheriff Noble and ask you whether or not these are the shorts you had on the night that this took place?

A. Yes, sir.

Q. Are those you spoke of as taking off in the corn field and putting back on again?

A. Yes, sir.

Q. You stated that night you had on a white blouse that you tore the collar off to bandage your wound . . . .

A. Yes, sir.

[fol. 171] Q. Wait just a minute, let me get it in the record. I hand you State Exhibit 1 to the testimony of Witness Noble and ask you if that is the blouse?

A. Yes, sir.

Q. Now, what color is your hair?
A. Brown.
Q. Is it light brown?
A. Yes, sir.
Q. Do you know what public hairs are, honey?
A. (No answer)
Q. Hairs that grow around the crotch?
A. Yes, sir.
Q. Are you aware of that?
A. Yes, sir.
Q. Did you give any of your public hairs to Mr. Charley Snodgrass?
A. Yes, sir.
Q. I will ask you for the record, what color your public hairs are?
A. Brown.
Q. Light brown?
A. Yes, sir.
Q. All right. That's all.

BY MR. GREAVES:

I don't care about asking anything.

BY THE COURT:

All right.

MR. CHARLES SNODGRASS

having been previously sworn, was recalled as a witness [fol. 172] by the State of Mississippi and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q. You are the same Mr. Charles Snodgrass that has testified previously in this case?
A. Yes, sir.
Q. I will ask you whether or not you obtained some pubic hair specimens from the victim, Miss Aleece Gober?
A. Yes, sir.

Q. I will ask you what you did with it, if anything?
A. It was carried to headquarters, sealed, and sent off to the FBI Laboratory in Washington.
Q. And came back along with the other evidence that was returned from the FBI laboratory?
A. Yes, sir.
Q. That's all.

BY THE COURT:

All right, gentlemen, what do you say?.

BY MR. WALLER:

The State rests, Your Honor.

(The State of Mississippi rests)

BY MR. GREAVES:

I am going to rest, Your Honor.

BY THE COURT:

All right.

(The Defendant rests)

(This was all the evidence offered in this case.)

[fol. 173] COURT REPORTER'S CERTIFICATE
(omitted in printing)

[fol. 174] CLERK'S CERTIFICATE
(omitted in printing)

[fol. 175] IN THE
SUPREME COURT OF MISSISSIPPI

No. 42,222

WILLIAM SMITH, JR.

v.

STATE OF MISSISSIPPI

OPINION—April 9, 1962

GILESPIE, JUSTICE:

William Smith, Jr., was indicted, tried and convicted of the crime of rape. The death penalty was imposed.

At about midnight on July 29, 1961, a seventeen year old boy and a fourteen year old girl were parked on a gravel road north of Canton. Appellant was riding in an automobile driven by James Matlock. When they got near the car where the young people were parked, appellant told Matlock that he was going to get some money and divide it with Matlock. Matlock stopped the car and appellant got out. When appellant did not return in about five minutes, Matlock left. Appellant went to the automobile where the young people were parked and reached in the car and placed a knife across the throat of the young man. He robbed the young man, then forced him and the young lady into a cornfield where at the point of a knife he forceably raped the young lady.

Appellant was arrested some three or four hours after the commission of the crime and placed in jail at Canton, and after a few hours was removed to the Highway Patrol [fol. 176] office near Jackson where he confessed. There can be no doubt whatsoever about appellant's guilt. The proof was overwhelming and appellant's confession was corroborated in many respects.

The only question raised is whether the confession was voluntary. The proof showed that appellant was arrested about four o'clock A.M., on Sunday, July 30, 1961, and

he confessed about twelve hours later. There were five officers present when he confessed and each one of them testified that appellant was not mistreated in any way whatsoever, and that appellant was advised he had a right to have a lawyer present and any statement he might make would be used against him in court. The appellant took the stand in the absence of the jury on the preliminary hearing to determine the admissibility of the confession and testified he signed the confession because the officers threatened to bring him back to Canton and put him in the county jail and have a mob get him. He also said that he had taken a lie test on the machine (meaning polygraph), and the officer told him he was lying. He said the confession was not of his own free will but was made through fright and fear of being mobbed. Every officer present before and after the confession testified and denied making any statement to the effect that appellant would be put in the Madison County jail so that a mob could get him. The lower court found that appellant was not told that a mob would be allowed to get him unless he confessed, and the testimony was overwhelmingly in accord with this finding. The officers admitted that appellant was told the polygraph machine indicated he was not telling the truth. If appellant was afraid, it was not [fol. 177] fear of the machine but its capacity to elicit truth. This fear, therefore, was of the truth and its consequences. Pinter v. State, 203 Miss. 344, 34 So.2d 723. The State did not bring out any of the references to the polygraph machine during the preliminary hearing on the admissibility of the confession. This was developed by appellant's counsel. We find no grounds for holding that the confession was not voluntary.

The crime was an awful and brutal one. The defendant's guilt was proven to a moral certainty. We find no error, and the case is affirmed.

AFFIRMED, AND THURSDAY MAY 17, 1962, IS SET AS THE DAY FOR THE EXECUTION OF THE DEATH SENTENCE.

ALL JUSTICES CONCUR

[fol. 178] IN THE
SUPREME COURT OF MISSISSIPPI

No. 42,222

WILLIAM SMITH, JR.

vs.

STATE OF MISSISSIPPI

JUDGMENT—April 9, 1962

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of Madison County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 26th day of September 1961—be and the same is hereby affirmed. It is therefore ordered and adjudged that the appellant, William Smith, Jr., for such his crime of rape, be safely kept by the proper authorities until Thursday, May 17, 1962, and on that date, he, the said William Smith, Jr., be by the duly and legally appointed person for such purpose, put to death in the manner prescribed by statute. And may the Lord have Mercy on his Soul. It is further ordered and adjudged that the County of Madison do pay the costs of this appeal to be taxed.

[fol. 179] IN THE
SUPREME COURT OF MISSISSIPPI

No. 42,222

KYLE, JUSTICE:

ORDER ON MOTION TO SET NEW DATE FOR EXECUTION

The appellant, William Smith, Jr., was indicted, tried and convicted in the Circuit Court of Madison County for the crime of rape. A death penalty was imposed. On appeal to this Court the judgment of the circuit court was affirmed on April 9, 1962, and Thursday, May 17, 1962, was set as the date for the execution of the sentence. William Smith, Jr. v. State (Miss. 1962), 139 So. 2d 857. A suggestion of error filed by the appellant was overruled on May 15, 1962. A petition for an appeal by way of certiorari to the Supreme Court of the United States and for stay of the death sentence pending such appeal was filed by the appellant with the Clerk of this Court on May 22, 1962; and an order was signed by a judge of this Court on May 24, 1962, allowing the appellant 90 days within which to perfect his appeal to the United States Supreme Court, and granting a stay of execution of the death sentence for the purpose of enabling the appellant to perfect said appeal.

[fol. 180] The 90-day period allowed by the order of the judge of this Court for the filing of a petition for certiorari to the Supreme Court expired on August 13, 1962. No petition for certiorari was filed with the Clerk of the Supreme Court within the 90-day period. The appellant, however, filed such petition with the Clerk of the Supreme Court on August 14, 1962, and the case was thereafter docketed as No. 374, Misc. of the October Term 1962. On September 8, 1962, the appellant filed a motion with the Clerk of this Court asking for a further stay of execution of the death sentence, pending action by the Supreme Court on said petition, notwithstanding the fact that the petition had been filed out of time. On Septem-

ber 14, 1962, the State filed its answer to the appellant's motion for a further stay of execution, and also a motion for an order of this Court fixing a new date for the execution of the death sentence. This Court by an order entered upon its minutes on September 24, 1962, overruled the appellant's motion for a further stay of execution. But in view of the filing of the petition for certiorari with the Clerk of the Supreme Court and the docketing of same prior to that date, no action was taken by this Court at that time on the motion of the State for an order fixing a new date for the execution of the death sentence.

It now appears to this Court that, on October 8, 1962, there was filed with the Clerk of this Court a certified copy of an order signed by Associate Justice Hugo L. Black of the Supreme Court of the United States, staying the execution of the death sentence pending the action of the Supreme Court upon the appellant's petition for certiorari. The stay of execution thus granted precludes affirmative action by this Court at this time upon the motion filed by the State asking that a new date be set for the execution of the death sentence.

[fol. 181] It is therefore ordered that the motion of the State for the setting of a new date for the execution be dismissed, without prejudice to the right of the State to file a new motion in the event the appellant's petition for certiorari be denied by the Supreme Court, or, in the event the petition for certiorari be granted and the judgment of this Court be affirmed by the Supreme Court.

MOTION TO SET NEW DATE FOR EXECUTION DISMISSED WITHOUT PREJUDICE.

ALL JUSTICES CONCUR EXCEPT ARRINGTON, J., WHO TOOK NO PART.

[fol. 182] IN THE
SUPREME COURT OF MISSISSIPPI

[Title Omitted]

ORDER GRANTING STAY OF EXECUTION AND OVERRULING SUGGESTION OF ERROR—May 15, 1962

The petitioner having presented to this Court a suggestion of error within the extended time allowed by this Court, and having submitted a petition for stay of execution of the judgment of execution presently scheduled for May 17, 1962.

IT IS HEREBY ORDERED AND ADJUDGED, that a stay of execution of the judgment of execution is hereby granted for a period of 14 days from and after May 17, 1962.

IT IS FURTHER ORDERED AND ADJUDGED, that the Sheriff of Sunflower County, Mississippi, and the Superintendent of the Mississippi Penitentiary, Parchman, Mississippi, be notified of this stay of execution by the Clerk of the Supreme Court of the State of Mississippi; that is to say the execution is not to take place until May 31, 1962.

ORDERED: That the suggestion of error filed herein be and the same is hereby overruled.

Minute Book "BM" Page 485-486

[fol. 183]

Clerk's Certificate [omitted in printing]

[fol. 184]

SUPREME COURT OF THE UNITED STATES

* * * *

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR CERTIORARI—
Dec. 17, 1962

On petition for writ of Certiorari to the Supreme Court of the State of Mississippi.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 667.

December 17, 1962

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 667

WILLIAM SMITH, JR.,

Petitioner,

vs.

STATE OF MISSISSIPPI,

Respondent.

BRIEF FOR PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 667

WILLIAM SMITH, JR.,

Petitioner,

vs.

STATE OF MISSISSIPPI,

Respondent.

BRIEF FOR PETITIONER

Opinion Below

The opinion of the Supreme Court of Mississippi affirming the conviction of the petitioner is reported at —— Miss. ——, 139 So.2d 857. It appears in the record at pages 126-127.

Jurisdiction

Petitioner was tried before a jury on September 25, 1961, found guilty of the crime of rape and sentenced to death in the Mississippi gas chamber. The Supreme Court of Mississippi affirmed the judgment and sentence on April 19, 1962, and denied a Suggestion of Error on May 15, 1962.

On December 17, 1962, this Court granted the petition for a writ of certiorari and leave to proceed *in forma*

pauperis. The execution of the death sentence is stayed by order of Mr. Justice Black dated October 5, 1962.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

Questions Presented

1. Whether petitioner, an indigent Negro convicted of raping a white woman and sentenced to death, was denied the right to counsel guaranteed by the due process clause of the Fourteenth Amendment when he was arrested on July 30, 1961 but not assigned counsel until September 21, 1961, though in custody at all times.

2. Whether petitioner was denied the effective assistance of counsel guaranteed by the due process clause of the Fourteenth Amendment.

3. Whether the petitioner was denied due process of law guaranteed by the Fourteenth Amendment where a confession introduced at trial against him (1) was the fruit of an illegal arrest; (2) was the fruit of an unconstitutional detention; (3) was obtained by physical and psychological coercion; and (4) was submitted to the jury under instructions in conflict with constitutional standards.

Statement of the Case

William Smith, Jr., the petitioner, a twenty-six year old Negro farmhand, attended school for two years. He was indicted for the crime of rape of a fourteen year old white girl in Madison County, Mississippi. He was tried before an all-white jury, found guilty, and sentenced to death.

The crime, according to the testimony of Aleece Gober, the alleged victim, and James Myers, occurred between

midnight and 2 A.M. on July 30, 1961, in the following manner:

James Myers, age 17 years, and Aleece Gober were parked in "a lovers lane" (R. 38); at about midnight a Negro opened the door on the right side of the car where Myers was sitting, stuck a knife at him (the purported weapon, a pocket knife with advertising on the side and a two-inch blade, was admitted into evidence at R. 99) and demanded everything he had—a watch and a billfold (R. 30). The Negro got in the car and on learning that Aleece could not drive, made them change places (R. 31). Myers drove about a mile and turned off to a gate. They got out of the car and went through a barbed wire fence about 200 feet into a cornfield with the Negro bringing up the rear (R. 31-36). Myers, on order, laid on the ground and put his face down (R. 34). The Negro forced Aleece to remove her shorts and underpants, made her lie down next to Myers on her back, and laid on top of her (R. 34-35). He had intercourse with her for about one-half hour (R. 49), during which time she cut her hand by trying to grab the knife (R. 44). They all got up, Aleece put on her outer shorts and they returned to the car through the barbed wire fence (R. 50). The Negro drove around "real fast" while making them keep their heads down on the floor-board, took them back to where they had been parked, searched the glove compartment, the back seat, and under the back seat for a gun, without success, and they sat and he talked. He warned them to stay down and left saying he would leave the car keys at the fork of the road (R. 51). They remained for about 10 minutes and then cut across a cotton field to a farm house (R. 51), which was about 700 to 800 feet from the road on which they were parked (R. 25), where they arrived at about 2 A.M. (R. 24).

The medical examination at about 3:30 A.M. at the Canton Hospital indicated that Aleece Gober had recently

had forcible sexual intercourse, and that it was her first intercourse (R. 55, 60).

Manner of Arrest and Detention

The sheriff who was called to the scene ordered bloodhounds and saw a dog with a patrolman follow a scent across a cornfield "in direction of the sawmill quarters" (R. 16). No testimony was offered as to where this dog went but Smith, who lived in the sawmill quarters, was arrested in his home at about 4 A.M. (R. 86, 87). He was taken to the Canton Police Department and transferred to the county jail "along with several others that we picked up. He was placed in a lineup with approximately eight or nine other suspects" (R. 76). He was taken later in the morning to Hinds County to the Mississippi Highway Patrol office in Jackson, where he was interrogated at length by five armed officers (R. 70, 78) and was subjected to a lie detector test (R. 77). He was told that he better confess because the machine showed that he was lying (R. 80). He signed the statement admitted into evidence as a confession at about 4 P.M. Thereafter, he was returned to Madison County, a search warrant was obtained and a watch, knife, and a pair of khaki pants were taken from his home. On the following day, upon motion of the District Attorney that "the facilities of the county jail . . . are inadequate for the safekeeping of the defendant and the Court . . . finds that the motion is well taken," petitioner was removed to the Hinds County jail (R. 2).

Counsel

Petitioner was arrested on July 30, 1961. He was indicted on September 20, 1961. Petitioner was unable to afford counsel and was without counsel for fifty-three days. Counsel was appointed on September 21, 1961 and peti-

tioner was arraigned the same day. On the following day, Friday, September 22, 1961, petitioner's court-appointed counsel announced that "he was ready for trial" on Monday, September 25, 1961 (R. 3).

Despite the fact that court-appointed counsel had only a week-end to prepare his case, he did not ask for a continuance. We do not know what steps he took to prepare for trial but as is shown from petitioner's wife's affidavit dated February 6, 1963, court-appointed counsel refused to speak to her before trial although she claimed to have important information material to the defense.[1]

In addition to neglecting to confer with Mrs. Smith as an indispensable part of his preparation for trial, court-appointed counsel failed to afford his client effective representation in the following ways:

1. He failed to ask for a continuance in order to have adequate time to prepare the defense.

2. He failed to move for a change of venue although his client's alleged rape of a white girl had been published in the community and petitioner claimed he had been threatened with mob action.

3. He failed to inquire whether Negroes were systematically excluded from the grand jury and from the venire called for the petit jury.

4. He failed to have his client examined by a psychiatrist to determine whether a defense of insanity could be raised.

---

[1] Appendix. Although not regular practice, several affidavits have been set out in the appendix to this brief in support of petitioner's contentions. They are offered not to establish the truth of their contents but for consideration in evaluating the competency of court-appointed counsel's representation.

5. His examination and cross-examination on the coerced confession issue were superficial and totally inadequate..

6. He failed to cross-examine the alleged victim. His cross-examination of James Myers was superficial and totally inadequate.

7. He failed to introduce any witnesses for the defense although witnesses with material information were available.

SUMMARY OF ARGUMENT

I.

Right to Counsel

Petitioner, an indigent, was arrested July 30, 1961 and was without counsel until an attorney was appointed by the court to represent him on September 21, 1961, a period of fifty-three days. The denial of counsel immediately upon arrest denied petitioner, a twenty-five year old Negro with a second grade education, due process of law. *Crooker* v. *California*, 357 U.S. 433. The absence of counsel was fatally prejudicial because petitioner was unaware of his right to remain silent in the face of prolonged interrogation by the police.

Petitioner, without advice of counsel, waived preliminary examination, a crucial stage of the proceedings. *Hamilton* v. *Alabama*, 368 U.S. 52. Whether or not to waive preliminary examination is a decision that can only be made intelligently by an experienced attorney. Denial of counsel, therefore, in these circumstances is a denial of due process.

Powell v. *Alabama*, 287 U.S. 45, requires that assistance of counsel at trial be effective assistance, rather than "pro forma." Petitioner had a particular need for effective counsel because he was faced with a capital charge and because he was young, uneducated, unintelligent, the case was complex, and the atmosphere prejudicial. Court-appointed counsel, however, failed to investigate though potential witnesses sought to confer with him, he took no time to prepare, he failed to move for a change of venue, he failed to look into the question of systematic exclusion of Negroes from the grand and petit juries, he failed to examine the state's witnesses thoroughly, and he failed to produce any witnesses for the defense though several were available.

II.

The Confession

Petitioner was arrrested without probable cause. The confession obtained from him while under illegal arrest was therefore inadmissible at trial. *Wong Sun* v. *United States*, 31 U.S. L. Week 4079. Likewise, the confession was inadmissible because it was obtained during a period of unconstitutional detention. *Mapp* v. *Ohio*, 367 U.S. 643.

Whether or not inadmissible for either of the two foregoing reasons, the confession was inadmissible because it was involuntarily extracted from petitioner. The totality of circumstances compel the conclusion that the confession was given as the result of an "overborne will." In addition, in submitting the confession to the jury, the trial court's instructions failed to meet constitutional standards.

ARGUMENT

I.

Right to Counsel

Petitioner Was Deprived of Due Process Because He Was Denied Counsel From the Time of Arrest for a Period of Fifty-three Days and Was Denied Effective Assistance of Counsel at Trial.

The present conviction is invalid under the Fourteenth Amendment because petitioner was deprived of his right to counsel during two critical points of the proceedings. First, immediately after his arrest, he was forced to undergo intensive and coercive questioning about his alleged participation in a rape without the assistance of a lawyer. Second, after the confession was extracted by the police, the State failed to provide the petitioner with counsel in time to represent him at his preliminary hearing where petitioner's substantial rights could have been preserved. He was also denied effective assistance of counsel at trial.

A. Lack of Counsel Immediately Upon Arrest Irreparably Prejudiced Petitioner in Violation of the Fourteenth Amendment.

An individual accused of a capital crime has the right to the assistance of counsel under the Due Process clause of the Fourteenth Amendment. *Powell* v. *Alabama*, 287 U.S. 45 (1932). This right exists not only with respect to the trial itself, but as to the pretrial proceedings. As the Court stated in *Crooker* v. *California*, 357 U.S. 433, 439-40 (1957):

> "[S]tate refusal of a request to engage counsel violates due process not only if the accused is deprived of counsel at trial on the merits . . . but also if he is deprived of counsel for any part of the pretrial proceedings,

> provided that he is so prejudiced thereby as to infect his subsequent trial with an absence of 'that fundamental fairness essential to the very concept of justice.' . . . The latter determination necessarily depends upon all the circumstances of the case."

In the *Crooker* case, the Court held that the petitioner was not deprived of due process even though he was not afforded the benefit of counsel immediately after his arrest. The Court reasoned that the petitioner was not "prejudiced" since his case was one of a "voluntary confession by a college educated man with law school training who knew of his right to keep silent." 357 U.S. at 440. The companion case of *Cicenia* v. *LaGay*, 357 U.S. 504 (1958), reached the same conclusion, again on the basis of the special circumstances existing in that case. There, the petitioner already had retained and consulted his family lawyer, and the Court could proceed on the assumption that the petitioner had been informed of his constitutional rights.

The present case is markedly different from both *Crooker* and *Cicenia*. The petitioner here did not come to the police, as did Crooker, with a college degree, or, as did Cicenia, from the arms of his lawyer. Instead, he was a frightened, inarticulate Negro with a second grade education, charged with the rape of a 14 year old white girl in Mississippi. If ever "all the circumstances of the case" (*Crooker* v. *California, supra* at 440) make it crystal clear that a petitioner was "prejudiced" by the absence of counsel, the circumstances here compel that conclusion.

The events immediately following petitioner's arrest strikingly bear out this conclusion. From the time of his arrest, petitioner was under sustained interrogation and examination. Shortly after his removal to Hinds County, the petitioner was subjected to a polygraph test and to a

gruelling session with the police as to whether he was lying when he denied committing the rape. During this entire period he existed in terror of mob violence. He testified at his trial that the only reason he confessed to the crime later that day was because "they threatened to bring me back to Canton and put me in the county jail and have a mob get me" (R. 88). It is surely not surprising that under the pressure of a determined interrogation and the polygraph test, the isolated and uneducated Negro petitioner finally agreed to confess.

In a recent unanimous decision of the Court of Appeals for the Ninth Circuit, *Griffith* v. *Rhay*, 282 F.2d 711 (9th Cir.), *cert. denied*, 364 U.S. 941 (1960), a conviction for murder was reversed on the ground that the defendant was "prejudiced" within the meaning of the *Crooker* case. Griffith was a murder suspect who was interrogated and confessed while a hospital patient following serious surgery and while under the influence of a drug. Although he was warned that anything he said could be used against him, he was not told that he did not have to answer, nor was he asked if he had a lawyer or told that a lawyer could be provided if he desired. He did not ask for a lawyer. The court held that Griffith was prejudiced by the absence of counsel since there was no indication that he knew of his right to remain silent. Counsel would undoubtedly have advised him of his rights and, under the circumstances, would probably have advised him to remain silent. The Court specifically distinguished the circumstances surrounding the confessions in *Crooker* and *Cicenia*, pointing out that Griffith was neither a "college graduate who had attended the first year of law school" nor denied access to a retained attorney by whom he "was presumably advised of his rights."

That the prejudice here warrants a reversal under the rule of *Crooker* and *Griffith* is even clearer when it is seen

in the perspective of traditional police methods of interrogation. Speaking for the Court in *Blackburn* v. *Alabama*, 361 U.S. 199, 206 (1960), the Chief Justice said:

> "Since *Chambers* v. *Florida*, 309 U.S. 227, this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition . . . A prolonged interrogation of an accused who is ignorant of his rights and who has been cut off from the moral support of friends and relatives is not infrequently an effective technique of terror."

Or, in the words of Justice Douglas, in *Crooker* v. *California*, 357 U.S. at 443 (dissenting opinion) "The pattern of the third degree runs through our cases: a lone suspect unrepresented by counsel against whom the full coercive force of a secret inquisition is brought to bear." See also *Spano* v. *New York*, 360 U.S. 315, 327 (1959) (Stewart, *J.* concurring). Judicial disapproval of oppressive third degree methods has been consistent with disclosures made by the police themselves.[2]

It is true that the Mississippi police officers testified that petitioner was advised of his right to counsel before he confessed. But it is clear that even if such advice was actually given, it came too late and was entirely ineffectual. In *Haley* v. *Ohio*, 332 U.S. 596 (1948), the Court disposed of a similar claim by pointing out that the defendant in that case, without aid of counsel, would have neither a full

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[2] For example, one police manual says: ". . . where emotional appeals and tricks are employed to no avail [the investigator] must rely on an oppressive atmosphere of dogged persistence. He must interrogate steadily and without relent, leaving the subject no prospect of surcease." O'Hara, Fundamentals of Criminal Investigation, 108, 112 (1956). Cited in Weisberg, Police Interrogation of Arrested Persons: A Skeptical View, 52 Journ. of Crim. Law, Criminology and Police Science 21 (1961).

appreciation of the advice nor "freedom of choice". The Court in *Haley* refused to "indulge these assumptions" and they cannot be indulged here in the case of an ignorant and frightened defendant. Furthermore, by the time petitioner was allegedly told that he could speak to a lawyer, he had already committed himself to escaping further interrogation by satisfying those who were keeping him isolated and in fear. The damage had been done, and the confession as good as over. In fact, he never saw a lawyer until counsel was assigned fifty-three days after his arrest. Surely such a procedure does not satisfy the requirements of due process.

B. Under *Hamilton* v. *Alabama*, 368 U.S. 52, Petitioner Was Denied Due Process When He Was Deprived of Counsel at the Time of the Preliminary Hearing.

In *Hamilton* v. *Alabama*, 368 U.S. 52, the petitioner was arraigned without counsel for a capital offense, and subsequently was convicted and sentenced to death. The Court held that the petitioner was deprived of due process because the denial of counsel at the time of arraignment denied petitioner important rights under Alabama law.

The *Hamilton* case stands for the proposition that when a defendant is required to appear at a "critical stage" in a criminal proceeding without counsel, and therefore without knowledge of his rights, a subsequent conviction is invalid. In that case, because of the absence of counsel, the petitioner lost the right to plead insanity, to enter pleas in abatement, and to attack the legality of the grand jury.

In the case at bar, petitioner waived examination on his own (Madison County (Miss.) Herald, August 3, 1961, p. 2), without being able to consult with counsel. He lost the benefit of skilled counsel to decide whether or not this course was wise.

The Mississippi Code provides:

> "Every person making an arrest shall take the offender before the proper officer without necessary delay for examination of his case." Miss. Code (1956 ed.), §2473.

The Mississippi Supreme Court has emphasized that §2473 "positively requires" that a prompt hearing be granted. *Winston* v. *State*, 209 Miss. 799, 48 So.2d 513 (1950). In *Sheffield* v. *State*, 201 Miss. 133, 28 So.2d 745, 746-747 (1947), the Court explained that its purpose is:

> "... to prevent an arresting officer or private person from detaining a person for an unreasonable length of time, whether arrested with or without a warrant, for any indictable offense committed in his presence, or where the arrest is made on probable cause or suspicion that the accused has committed a felony, without affording him an opportunity to have a hearing on the merits of the accusations against him. One thus arrested may, in some instances, be unable to execute a bail bond, but he is nevertheless entitled, in such event to have his case examined into without unnecessary delay."

Accordingly, Mississippi law clearly requires the State to present a prima facie case against the petitioner before an impartial judicial officer, unless intelligently waived by the accused.[3] By failing to appoint counsel prior to the hearing, the State deprived the petitioner of important rights and, therefore, under *Hamilton*, of due process of law.

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[3] At the examination, the Magistrate is also charged with the duty of instituting commitment proceedings "if it shall appear that the prisoner was insane when the offense was committed, and still is insane." Miss. Code (1956 ed.), §2573.

There is no question that a preliminary examination is a crucial step in the defense of a criminal case. Its importance has been described in the following words:

> "As a general rule, a preliminary examination should never be waived. Counsel should utilize every opportunity, instead, to obtain all possible information about the details, and the nature, of the charges filed against his client. He should particularly try to learn all the facts known by the prosecution witnesses, which might prove favorable to the defense. To this end, he might consider permitting these witnesses to testify freely, without interposing all the objections available to him by the rules of evidence. He should also forego no opportunity to cross-examine these witnesses. . . .
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> * * * * *
>
> "Counsel should waive examination if he feels that the proof now in control of the District Attorney will not be available to the prosecution at the trial, particularly if some of the witnesses live outside the state or are about to depart therefrom." Paperno and Goldstein, Criminal Procedure in New York (New York, 1960) 33.

On the other hand, the dangers of a preliminary examination have also been pointed out.

> "In many other cases, however, the advantages [of a preliminary examination] are illusory, while the disadvantages may be real. Consider the following: (1) The publicity may be vastly increased, by getting morbid details in the hands of the press, so that it is harder to get a jury. (2) A witness may be important to the prosecution, yet, if he does not testify in a hearing, subject to cross-examination, his testimony is not perpetuated. Thus if he dies or disappears before trial, his testimony may not be read and the case may fall.

(3) A witness may have a change of heart after the lapse of time. . . . If he has not committed himself in sworn testimony at the hearing, his testimony at the trial may be somewhat more favorable than might otherwise be the case. (4) Once you have cross-examined a witness in court, he is more likely to identify himself with the prosecutor's side and resist any interviews. He is more likely to throw himself enthusiastically into the opposition's camp.

"Of course, if you think the prosecution witness is lying, or confused, you may want to pin him down, but, for heaven's sake, don't educate him by confronting him with your weapons so that he is afforded a chance to straighten himself out." Steinberg and Paulsen, A Conversation With Defense Counsel on Problems of a Criminal Defense. 7 Prac. Law 25, 30 (May, 1961), quoted in Paulsen and Kadish, Criminal Law and Its Processes (Boston, 1962) 919.

It is plain to see, therefore, that the question whether or not to hold a preliminary examination can be answered only by a lawyer who understands both its advantages and perils to his client and whose experience and intuition is carefully tuned to every consideration. It is hardly the kind of judgment that could intelligently be made by any layman, no less a man with a second grade education charged with a capital crime.

But it is not necessary to guess what prejudice resulted from the failure to have counsel assigned at the time of the preliminary examination. Certainly, the "degree of prejudice can never be known" (*Hamilton* v. *Alabama, supra* at 55) at this remove. Rather, the Due Process clause is violated whenever a defendant in a capital case is denied the opportunity to have the assistance of counsel at a pre-

liminary proceeding. *Hamilton* v. *Alabama*, *supra*; *Reece* v. *Georgia*, 350 U.S. 85; *Powell* v. *Alabama*, *supra*.

It is no answer, of course, for Mississippi to say that the petitioner "waived" his right to a preliminary proceeding. He needed a lawyer for the very purpose of deciding whether to waive or to insist that the hearing be held. If a valuable right could have been realized at that time, *Hamilton* bars the State from denying it to the petitioner on the ground he surrendered it. Indeed, it is absurd to say that this almost totally uneducated and inarticulate individual, acting under severe emotional stress, could have knowingly waived the substantial legal advantages possibly available to him in a preliminary proceeding.

It is clear that the petitioner was deprived of due process when, without the assistance of counsel, he was subjected to a police inquisition and compelled to forfeit a preliminary proceeding at which the State was required to make known to him the precise charges and evidence upon which his life hinged.

C. The Petitioner Was Denied a Fair Trial by the Failure of His Court-Appointed Counsel to Represent Him Effectively.

The Need to Look Beyond the Record

The question of petitioner's failure to be represented by competent counsel in a state capital case was first raised as a federal constitutional issue in the Suggestion of Error filed by his new attorneys in the Mississippi Supreme Court on May 7, 1962. This Suggestion was denied.

Bringing the question of competence of counsel before this Court presents a rather special procedural problem. Usually this Court's scrutiny of a case is limited to the record. In this case, however, almost all the information

relevant to counsel's competence must necessarily be found outside the record. Any judgment on effectiveness of counsel involves a comparison of what the attorney did for his client with what he might have done, had he taken reasonable time and reasonable pains to prepare his case. What the court-appointed attorney in this case did for his client is found in his trial record. What he might have done is only partially to be found in the record. Most of the facts he should have investigated and could have introduced into evidence are to be found in the affidavits included in the appendix to this brief. We do not claim their contents are true; we do claim they justified investigation.

1. *Powell* v. *Alabama*: *The Meaning of Effectiveness.*

In *Powell* v. *Alabama*[4] this Court established the rule that every defendant in a capital case in a state court must be furnished with counsel. The court went well beyond asserting the mere right to counsel. It put flesh on the bare bones of its pronouncement. Counsel is no counsel unless effective counsel; counsel "zealous and active" rather than "pro forma".[5] Speaking for the Court in *Powell*, Mr. Justice Sutherland refers to the right to counsel in the "substantial sense" and refuses to "ignore actualities".

> "In a capital case, where the defendant is . . . incapable adequately of making his own defense because of ignorance . . . illiteracy or the like, it is the duty of the Court . . . to assign counsel for him as a necessary requisite of due process of law; and the duty is not discharged by an assignment at such time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case."[6]

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[4] 287 U. S. 45 (1932).
[5] *Id.* at 58.
[6] *Id.* at 71.

Out of an analysis of the cases in this area, several guiding principles have emerged as to what the Court means when it tries to define effective counsel.

a. *Counsel Most Likely to Be Effective Is Counsel of One's Own Choice.*

In *Powell* the Court said that "the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of one's own choice."[7] One of the central reasons for reversing the conviction in the recent circuit court case of *MacKenna* v. *Ellis*[8] was that inadequate court appointed counsel were forced on the defendant over his protest. A similar situation existed in the instant case. Smith did not have an adequate opportunity to get his own lawyer. He was held incommunicado over the summer. Counsel was appointed just a few days before the trial and refused to see Mrs. Smith over the weekend when she tried to give him highly relevant evidence. Realizing that the state had appointed a lawyer who was too busy with other matters to be interested in her husband's case, Mrs. Smith moved as promptly as she could under the circumstances and contacted William Higgs, Esq., a lawyer in Jackson. Higgs called the judge on the morning of the trial and asked permission to enter the case at the request of defendant's wife. He was refused this permission and was told that if he tried to enter it would mean serious trouble for him.[10]

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[7] *Id.* at 53.

[8] See Affidavit of Mary Nell Smith, petitioner's wife, Appendix.

[9] 280 F.2d 592, cert. denied, 368 U.S. 877 (1961).

[10] See Affidavit of William Higgs, Appendix.

b. *If Counsel Is Appointed by the Court, He Must Have a Chance to Make a Thorough Investigation of His Client's Case.*

The Court in *Powell*, quoting with approval *Commonwealth* v. *O'Keefe*,[11] said:

> "It is vain to give the accused a day in court, with no opportunity to prepare for it, or to guarantee him counsel without giving the latter any opportunity to acquaint himself with the facts or law of the case."

In the present case, counsel was appointed by the state just a few days before the trial, which gave him scant opportunity to contact witnesses or ferret out any relevant psychiatric evidence. It must also be borne in mind that adequacy of preparation is not an element to be weighed in the balance with other factors. If there has been inadequate preparation, "due process" has been denied.

c. *The Court Looks at the Quality of the Investigation That Counsel Has Conducted.*

In *Avery* v. *Alabama*[12] two lawyers were appointed for a defendant charged with murder three days before the trial. The Court said that the sole question was whether the defendant was denied the right of counsel "with the accustomed incidents of consultation and opportunity of preparation for trial." [12a] Although the time for preparation was short, the Court looked at the quality of counsel's performance during the investigation period. The Court, speaking through Justice Black, found that counsel had

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[11] 298 Pa. 169, 173.

[12] 308 U.S. 444.

[12a] *Id.* at 445.

well utilized the limited time allotted them. They had been zealous and active.

> "That the examination and preparation of the case . . . had been adequate for counsel to exhaust its every angle is illuminated by the absence of any indication, on the motion and hearing for new trial, that they could have done more had additional time been granted." [13]

Despite the shortness of time the Court upheld the conviction finding that over the whole course of the proceedings there was not a denial of fundamental fairness.

In contrast, however, the investigation here was quite the opposite of "exhausting every angle". It is not known how long court-appointed counsel consulted with petitioner, but he refused to see Mrs. Smith or listen to her evidence, nor did he make any inquiries of petitioner's family or friends. What the Court said of the lawyers in *Powell* must also cover the conduct of counsel here.

> "It is not enough to assume that counsel thus precipitated into the case thought there was no defense, and exercised their best judgment in proceeding to trial without preparation. Neither they nor the court could say what a prompt and thorough going investigation might disclose as to the facts. No attempt was made to investigate. . . ." [14]

d. *The Court Has a More Difficult Time Passing Judgment on Counsel's Tactics at the Trial.*

Generally, a large amount of discretion must be given counsel while conducting a trial and courts are reluctant to

[13] 308 U.S. at 452.

[14] 287 U.S. at 58.

find an abuse of that discretion. Any standard for determining whether adequate skill was exhibited by counsel at the trial is subjective at best, and in deciding on counsel's competence the Court has leaned heavily on more objective factors—such as insufficient time to prepare or insufficient preparation in fact, notwithstanding the time allotted. Suffice it to say that in the instant case counsel brought forth no witnesses for the defendant, nor did he introduce any evidence for the defense.

To delve further into the language of the cases dealing with the right to effective counsel would be an unnecessary use of this Court's time. Petitioner does feel, however, that two recent decisions of the Circuit Court of Appeals should be brought to this Court's attention. The first of these is *MacKenna* v. *Ellis*,[15] decided by the Fifth Circuit in 1960. MacKenna was a college graduate and had been convicted of stealing a camera worth $250. Two young lawyers were appointed for him on Friday and the trial took place the next Tuesday. There, as here, counsel failed to move for a continuance. There was not sufficient time to contact witnesses who might have testified in MacKenna's behalf, with the result that he was convicted. The Court, in an opinion by Judge Wisdom, reversed, citing *Paoni* v. *United States*, 281 F. 801, 803 (1922).

> "To one accused of crime (the right to counsel and right to obtain witnesses) are very substantial rights. *Yet, they are barren if given at a time when assistance by counsel in issuing subpoenas is impracticable and when service of subpoenas and the appearance of witnesses is impossible.*"[16]

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[15] Supra, note 8.

[16] 280 F.2d at 603. Emphasis added by the court in *MacKenna*. Judge Wisdom further noted that "Although *Paoni* involved the Sixth Amendment . . . the principle that controlled in *Paoni* ap-

In *MacKenna*, the court felt that it was so important for the defendant to have effective counsel that it reversed, even though the crime charged was only the theft of a $250 camera. In this case, petitioner's life is at stake.

In *Brubaker* v. *Dickson*,[17] the defendant was on trial for murder. He had a tenth grade education, having failed the eleventh grade. Postconviction examination of the defendant showed that, while not insane, he was disturbed emotionally and had a tendency to drink. His court-appointed attorney, however, had made no effort to elicit defendant's history, made no inquiries of his family, friends, or employers and failed to arrange for a psychiatric examination. Furthermore, though counsel had been appointed more than three months before trial, he had had only limited consultation with the defendant.

The court first considered the procedural problem of going outside the record.

> "We note at the outset that defendant's allegations of fact outside the trial record must be considered in determining whether the petition alleged a denial of appellant's constitutional right to the effective aid of counsel. A contrary rule would fall short of protecting this right. When inadequate representation is alleged, the critical factual inquiry ordinarily relates to matters outside the trial record, whether trial counsel consulted sufficiently with the accused, and adequately investigated the facts and the law; whether the omissions charged to trial counsel resulted from inadequate preparation rather than from unwise choices of trial

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plies with equal force [to the] Fourteenth Amendment." The opportunity of an accused to meet the prosecution's case with the aid of witnesses is historically and in practice fundamental to a fair trial. *Powell* v. *Alabama* (1932), 287 U.S. 45.

[17] 310 F.2d 30.

> facts and strategy. If the petition, including appellant's allegations of fact outside the trial record, presents grounds which would entitle appellant to relief, he should be afforded an opportunity to support his allegations by proof." [18]

Then the Court, citing *Powell* and other Supreme Court cases made its judgment on the standard for effective representations by counsel. The requirements were twofold: not only must counsel have sufficient time to prepare his case, but he must *in fact* have rendered adequate service to his client. The Court concluded that Brubaker's trial had not met these requirements.

> "Appellant does not complain that after investigation and research trial counsel made decisions of tactics and strategy injurious to appellant's cause; the allegation is rather that trial counsel failed to prepare and that appellant's defense was withheld not through deliberate though faulty judgment, but in default of knowledge that reasonable inquiry would have produced and hence in default of any judgment at all. The omissions alleged by appellant 'were not mistakes of counsel or errors in the course of the trial. If true, they constitute a total failure to present the cause of the accused in any fundamental respect. . . . ' " [19]

Petitioner submits that, given the circumstances of this case, he comes clearly within the rationale of *Powell*, *Avery*, *MacKenna* and *Brubaker* and that his case, like theirs, should be reversed for lack of "due process."

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[18] 310 F.2d at 32.

[19] 310 F.2d at 39.

2. *Petitioner Had a Particular Need for Effective Counsel.*

Betts v. *Brady*,[20] and the cases stemming from it, stand for the proposition that there is no inherent right to any counsel whatsoever in a state non-capital criminal case. Whether the assistance of counsel is a necessary ingredient of due process under the Fourteenth Amendment depends on the circumstances.

> ". . . denial (of due process) is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness . . . may in other circumstances . . . fall short of such denial." [21]

The instant case is not a *Betts* v. *Brady* case. Petitioner did have counsel physically present. Moreover, petitioner was being tried for a capital crime, a situation in which the right to counsel is absolute. The *Betts* v. *Brady* cases are extremely important, however, for their approach to the problem of due process and the criminal defendant. This is the type of case which has most often been before the Court, and, in a deeper sense, the Court has not only been deciding the issue of "right to counsel" versus "no right to counsel". It has also been dealing with the problem of when effective representation is most necessary. Any case deciding that a counsel must be present to satisfy due process is also, of course, a decision that such counsel must do an effective job. Otherwise his physical presence would be meaningless. And it is perfectly logical to argue that the *Betts* v. *Brady* decisions are *a fortiori* decisions of the

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[20] 316 U.S. 455 (1942), being reconsidered this term in *Gideon* v. *Cochrane*, No. 155.

[21] 316 U.S. at 462.

instant case. For the mere presence of ineffective counsel—ineffective because he has not been given or taken enough time properly to prepare a capital case—can be even more damaging to a defendant than the presence of no counsel at all. The presence of ineffective counsel is insidious because it can deceive a reviewing tribunal into believing that the substance of justice has been meted out, whereas, in reality, only the forms of justice have been hurried through. And it is insidious also because a defendant, too ignorant or poor to employ counsel of his own choice, can be lulled into the false security that court appointed counsel will prosecute his defense "zealously and actively" rather than ineffectively. Thus he may bypass the opportunity to bring forth witnesses who might have been summoned had the accused pleaded his own cause.

The "absence of counsel", non-capital, *Betts* v. *Brady* cases are instructive primarily for their approach to "due process." "Due process" is a fluid concept and the presence of counsel is only one of a number of factors which make it up. In making its judgment whether lack of counsel at a given stage in the case has been so prejudicial as to amount to a lack of "due process," the Court has looked primarily at the needs of the defendant. The more serious the crime and the more likely the danger of prejudice against the accused, the more insistent have been the Court's demands for representation by counsel. This same reasoning must also carry over in formulating a "due process" standard for the effectiveness of counsel. In a capital case, of course, counsel must at least be present. That is the floor below which the Supreme Court has not gone. Petitioner submits that in addition to this minimum the Court should be especially vigilant to require counsel to be particularly effective when certain circumstances, the circumstances pointed to in the *Betts* v. *Brady* cases, are present.

The following factors have led to requiring the presence of counsel in non-capital cases and should, correspondingly, require especially effective counsel in a capital case.

1. The ignorance of the accused.

2. His lack of education.[22]

3. His youth.[23]

4. The accused's previous experience with the law and familiarity with legal procedures.[24]

5. Whether the legal issues being tried are complex.[25]

6. Whether the case is being tried in an atmosphere of prejudice.[26]

If these criteria are accepted as measuring rods for requiring special diligence on the part of counsel, it at once becomes clear that the need for effective representation was most urgent in this case. At the time of the crime William Smith was a young Negro, twenty-five years old. He had only a second grade education and was illiterate. Furthermore, this Court is asked to take judicial notice of

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[22] See *Moore* v. *Michigan*, 355 U.S. 155. Here the accused, a seventeen year old Negro with only a seventh-grade education pleaded guilty to murder and was sentenced to life. The Supreme Court reversed, concluding that his right to counsel was not freely and intelligently waived.

[23] See *Herman* v. *Claudy*, 350 U.S. 116. Defendant was only twenty-one years old and had only six years of schooling.

[24] See *Betts* v. *Brady*, 316 U.S. 455, 472.

[25] See *Herman* v. *Claudy*, 350 U.S. 116. But see *Wade* v. *Mayo*, 334 U.S. 672, 684 (1948): "There are some individuals who, by reason of age, ignorance or mental capacity, are incapable of representing themselves adequately in a prosecution of a relatively simple nature."

[26] *Powell* v. *Alabama*, 287 U.S. 45.

the fact that the State of Mississippi was, at the time of the trial, a hotbed of hostility to Negroes.

Therefore, if the question whether due process has been afforded a defendant is a judgment to be made "on all the circumstances of the case," petitioner presents very compelling circumstances for enforcing the mandate of *Powell* v. *Alabama* most scrupulously. Given then the cluster of circumstances which made pressing the need for effective representation of petitioner and given also his attorney's utter failure to act zealously in his behalf, petitioner submits that his conviction is "offensive to the common and fundamental ideas of fairness and right" [27] and that it cannot be upheld.

3. *Counsel's Conduct in This Case Does Not Amount to Effective Representation Sufficient to Satisfy the Requirements of the Due Process Clause of the Fourteenth Amendment.*

Petitioner has set forth above the standard of effectiveness required by *Powell* v. *Alabama*. He has also shown that his situation is one which calls for a vigorous application of the doctrine of the *Powell* case. He has also set out the basic elements of counsel's failure to represent him adequately, especially as those failures fall within the disapproval of this Court as not affording him "due process." We proceed now with an account of how court-appointed counsel neglected his constitutional responsibilities to him.

(a) *Counsel Was Given Too Little Time in Which to Properly Prepare a Defense in a Capital Case.*

Counsel was appointed for William Smith on September 21, 1961. The trial was held in the Madison County Court-

[27] *Betts* v. *Brady*, 316 U.S. 455, 473.

house on Monday, September 25th. The jury returned a verdict of guilty that same day, and William Smith received a mandatory sentence of death in the Mississippi gas chamber.

At no time did counsel move for a continuance. Yet this Court, in *Powell v. Alabama*, has clearly indicated that to allow counsel to go to trial in a capital case under circumstances like those which surrounded William Smith's case amounts to a denial of due process. The *Powell* court was fully conscious of the evils of "the law's delay." It felt that speedy justice—provided it was justice—should be encouraged. But the court was even more wary of the insolence of office:

> "The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of regulated justice but to go forward with the haste of the mob." [28]

By allowing counsel to go forward with a defense in a case involving the death penalty, the State of Mississippi was equally responsible for his failure to make a "thorough-going investigation" of his client's case.

(b) *Counsel's Failure to Investigate the Facts and to Confer With Vital Witnesses Resulted in Petitioner Being Deprived of Evidence That Was Essential to His Defense.*

The competence of an attorney is measured by what he *did* for his client compared with what he might have done.

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[28] 287 U.S. at 59.

If court-appointed counsel had talked with the people whose affidavits are annexed to this brief, he could have presented at the trial evidence of beatings which, if true, would clearly indicate that Smith's confession was coerced; evidence that these beatings so confused Smith that he was even referring to the police officers as members of his family; evidence that one of the state's most crucial exhibits at the trial—pants containing pubic hair alleged to be that of the victim—were not the pants that William Smith was wearing on the evening that the crime was committed.

The affidavits of Mrs. Smith, Julia Mae Jones, and Rosetta Body, taken together are some evidence that William Smith was severely beaten before he confessed. If evidence of such beatings had been introduced before the trial or before the appellate court, this would have been sufficient ground for the exclusion of the confession —the knife, the watch, and the pants would also have been excluded under the rule of *Mapp* v. *Ohio*, 367 U.S. 643. There is also strong evidence that petitioner was extremely confused as the result of such beatings. As it was, however, counsel made no inquiry whatever on these matters either on direct or cross. He made no such inquiries because he knew nothing about the beatings nor did he bother to find out.

One of the most telling pieces of evidence against petitioner at the trial was a pair of pants which an expert for the state testified contained pubic hair similar to the pubic hair of the victim. It was mandatory for petitioner to be able to refute such evidence. Yet when Mrs. Smith came to Mr. Greaves to give him just such counter-evidence, he refused to talk with her. If he had, he would have known that Mrs. Smith, Robert Johnson and Mrs. Jones would all have testified that petitioner was wearing grey, not khaki pants. If petitioner's lawyer had conferred with Mrs. Smith

and the other witnesses, he could assuredly have presented this evidence.

(c) *Counsel Failed to Move for a Change of Venue Although There Is Evidence That His Client's Alleged Rape of a White Girl Seriously Prejudiced Him in the Community.*

The Mississippi Change of Venue statute permits counsel to change a trial to another county if there is prejudgment or ill will against a defendant in the county in which the crime was committed.[29] There is evidence that such ill will existed against William Smith. Extensive publicity was given the case. A picture of Smith with his arms handcuffed behind his back was shown on the front page of the *Jackson Clarion Ledger* on July 31, 1961, and a page 4 story in the *Jackson Daily News* on the same day. The *Madison County Herald* had a front page story on August 3, 1961. The latter story, referring to the waiver of the preliminary examination said "The hearing was held in the Madison County Courthouse—which was cleared of people and locked—before Justice of the Peace Milton Sandidge, and then the two [Smith and Matlock] were returned to an undisclosed jail." Most importantly, on the very day after his arrest the District Attorney moved that Smith be transferred from the Madison County jail for his own safekeeping and the Madison County Circuit Court, having heard the evidence, found that the motion was well taken and ordered the transfer.[30] Nonetheless counsel did not choose to make a motion for a change of venue for his client.

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[29] Miss. Code (1956 ed.), §2508.

[30] R. 2.

(d) *Counsel Failed to Inquire Whether Negroes Were Systematically Excluded From the Grand Jury and From the Venire Called for the Petit Jury.*

In *Reece* v. *Georgia*,[31] a right to counsel case, the Court considered the question of systematic exclusion of Negroes from the jury. It noted that no Negro had served on the grand jury in the County in which the case was tried for as long as witnesses could remember and that of 534 names on the grand jury list only 6 of this number were Negroes. The population ratio of whites to Negroes in the county in which Reece's trial took place was 16,201 male whites of voting age to 1,710 male Negroes of voting age.[32] The Court said that

> "This evidence, without more, is sufficient to make a strong showing of systematic exclusion. The sizeable Negro population in the county, the fact that all-white juries had been serving for as long as witnesses could remember, and the selection . . . of a relatively few Negroes who would probably have been disqualified for actual jury service all point to a discrimination 'ingenuous or ingenious' Smith v. Texas, 311 U.S. 128, 132."[33]

In Madison County, where William Smith's trial took place, the case for arguing systematic exclusion is much stronger. The 1960 census shows 5622 whites of voting age and 10,366 Negroes of voting age, yet only a small proportion of Negroes are able to vote each year.

Counsel, however, made no investigation of the possibility of systematic exclusion of Negroes from the juries.

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[31] 350 U.S. 85.

[32] 350 U.S. at 88 (1950 Census figures).

[33] *Ibid.*

(e) *Counsel Made No Effort at Trial to Thoroughly Examine the State's Witnesses.*

For a discussion of counsel's neglect to investigate and examine the state's witnesses concerning the involuntary nature of the confession, see II C, infra.

The record speaks for itself concerning counsel's effort to question the alleged victim and her companion. He did not cross-examine the girl at all; his total cross-examination of her companion occupies one-and-a-half pages of the record, exactly none of which concerns the petitioner. Nowhere in the record, in fact, does either the victim or her companion identify petitioner as the culprit. Plainly, there was much to be inquired about, but counsel simply omitted to do so.

II.

The Confession

A. Petitioner's Confession Was Inadmissible at Trial Because It Was the Fruit of an Illegal Arrest.

Smith was taken into custody in his home at approximately 4 A.M. without a warrant. No evidence was introduced to show why he was arrested but in view of the fact that he was later transferred from the Police Department to the county jail "along with several others we picked up" and "placed in a line-up with eight or nine other suspects" (R. 76), it is apparent that his arrest—like that of the others who were not charged with this crime—was part of a general roundup of Negroes living in the sawmill quarter. No cause whatsoever was shown for his arrest.

The standard upon which an arrest must be based was enunciated again by this Court in *Wong Sun* v. *United States*, 31 U.S. L. Week 4079, 4081-82 (U.S. January 14, 1963):

"It is basic that an arrest with or without a warrant must stand upon firmer ground than mere suspicion; see *Henry* v. *United States*, 361 U.S. 98, 101, though the arresting officer need not have in hand evidence which would suffice to convict. The quantum of information which constitutes probable cause—evidence which would 'warrant a man of reasonable caution in the belief' that a felony has been committed, Carroll v. United States, 267 U.S. 132, 162—must be measured by the facts of the particular case. The history of the use, and not infrequent abuse, of the power to arrest cautions that a relaxation of the fundamental requirements of probable cause would 'leave law abiding citizens at the mercy of the officers' whim or caprice' Brinegar v. United States, 338 U.S. 16, 176."

"Whether or not requirements of reliability and particularity of the information on which an officer may act are more stringent where an arrest warrant is absent, they surely cannot be less stringent than where an arrest warrant is obtained. Otherwise, a principal incentive now existing for the procurement of arrest warrants would be destroyed. *The threshold question in this case, therefore, is whether the officers could, on the information which impelled them to act, have procured a warrant for the arrest of* [the suspect]." (Emphasis supplied.)

If the officers had applied for an arrest warrant, what could they have said but that they were led to the sawmill quarter, where petitioner lived, by a bloodhound. Nothing else. The record discloses no evidence whatever on which to base a conclusion that there was probable cause for petitioner's arrest. *Wong Sun, supra; Mapp* v. *Ohio*, 367 U.S. 643; *Henry* v. *United States*, 361 U.S. 98; *Carroll* v. *United States*, 267 U.S. 132.

Wong Sun holds that verbal statements of an accused made in the course of, or as the consequence of, an illegal arrest, are inadmissible at trial.

> "... [V]erbal evidence which derives from an unlawful entry and an unauthorized arrest ... is no less the fruit of official illegality than the more common tangible fruits of the unwarranted intrusion." 31 U.S. L. Week at 4083.

There is no question from the record that petitioner's arrest was entirely fortuitous. Having been led to the sawmill quarter, the officers arbitrarily took eight or nine Negroes into custody, petitioner among them. A dragnet arrest of that sort violates constitutional standards and the confession, which was the immediate fruit of that violation, is inadmissible at trial, as are the wallet, knife and trousers, obtained as a consequence of the illegal confession.

B. The Confession Was Obtained During a Period of Unconstitutional Detention and Was Therefore Inadmissible.

As shown above, petitioner's arrest was without probable cause and therefore illegal. It was additionally illegal and unconstitutional because the petitioner was not taken "without unnecessary delay" to a magistrate as required by Mississippi law. Miss. Code (1956 ed.), §2473.

Under like circumstances petitioner's confession would be inadmissible in the federal courts. *McNabb* v. *United States*, 318 U.S. 332; *Mallory* v. *United States*, 354 U.S. 449; Rule 5(a), Federal Rules of Criminal Procedure.

Under *Mapp* v. *Ohio*, *supra*, the fruits of an illegal search are now inadmissible in state courts as they have been in the federal courts since *Weeks* v. *United States*, 232 U.S. 383. And as was said in *Wong Sun*, *supra*: "... verbal

evidence which derives so immediately from an unlawful entry and unauthorized arrest . . . is no less the 'fruit' of an official illegality than the more common tangible fruits of the unwarranted intrusion. See *Nueslin* v. *District of Columbia*, 115 F.2d 690." 31 U.S. L. Week at 4083.

Thus, a confession, like any verbal statement obtained during the course of an illegal arrest or illegal detention, should be held by this Court to be inadmissible against an accused in a state criminal prosecution. Illegal detention prior to a preliminary hearing is "a breeding ground for coerced confessions." *United States* v. *Carignan*, 342 U.S. 36, 46 (concurring opinion). By declaring that confessions obtained during periods of detention are in flagrant violation of state law, the suspicion always cast on confessions so obtained would not be removed.

C. The Petitioner's Conviction Was Based on an Involuntary Confession.

In evaluating the admissibility of a confession, this Court will examine the "totality of circumstances" surrounding the confession. *Fikes* v. *Alabama*, 352 U.S. 191; *Gallegos* v. *Colorado*, 370 U.S. 49. These include the manner and duration of detention preceding and following the disputed statement, the attitude of the police, and the age, mental capacity, and social condition of the accused.

What is the "totality of circumstances" in this case?

(a) *The petitioner.*

At the time of the crime, petitioner was a 25 year old Negro farmhand in Canton, Mississippi, who had attended school to the second grade (R. 88). According to the description of his counsel, in his brief on appeal to the Mississippi Supreme Court (attached as an Appendix to the Petition for Certiorari in this case), petitioner was "an

uneducated, superstitious" Negro who "worshipped at the shrine of, sorcery, voodoo and witchcraft, and who was easily influenced by anything smacking of the supernatural."

(b) *Police pressure prior to petitioner's confession.*

According to the uncontradicted evidence in this case, petitioner was illegally arrested at four in the morning on July 30, 1961, when he was routed out of bed in his home without a warrant or probable cause (see II A, supra). Along with several other Negroes he was taken to a jail to be questioned and placed in a line-up for identification by a white girl who claimed that she had been raped by a Negro (R. 76).

For twelve hours following his arrest petitioner was continually questioned by five state officers at least two of whom were armed (R. 70, 78). During this period, petitioner was not afforded a preliminary hearing before a judicial officer as required by Mississippi Law (see IB, supra). He did not have the advice of counsel, nor was he allowed communication with anyone other than law enforcement officers and James Matlock, one of his accusers (see I, supra). Apparently, petitioner was given nothing more to eat during his twelve hours of questioning than some breakfast. Possibly, he was given nothing at all.[34]

At 11, or 11:30 A.M. petitioner was transported from Madison County to Hinds County where he was forcibly subjected to a polygraph test (R. 77). He was told by the officers administering the test that the polygraph proved

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[34] Direct examination of Officer Charles Snodgrass (R. 73):

Q. Do you know whether or not he had been fed that day? A. I don't know to my own knowledge.

Direct examination of Sheriff Billy Noble (R. 77):

Q. Do you know whether or not he was fed at any time during the day prior to the confession? A. Breakfast facilities were available to him at the Canton jail.

he was lying, and that he might as well confess (R. 80). In addition, he was informed that he had already been implicated by James Matlock with whom he was confronted (R. 74, 77).

According to petitioner's testimony, which is denied, he was threatened with violence if he did not confess:

> "if I didn't say I did it him (i.e., Mr. Snodgrass) and the sheriff would bring me back to Canton and put me in the county jail and turn me over to a mob crowd" (R. 88).

The record is barren of any evidence that petitioner was told he had the right to remain silent.[35]

After these events, and in the presence of five officers (R. 93-94) and James Matlock (R. 76, 78), petitioner confessed at 4 P.M. (R. 76).

(c) *Police pressure after the alleged confession.*

This Court has considered events subsequent to a confession in determining whether the confession was given voluntarily:

> "It is said that these events are not germane to the present problem because they happened after the confession was made. But they show such a callous attitude of the police towards the safeguards which respect for ordinary standards of human relationships compels that we take with a grain of salt their present apologia that the five-hour grilling was conducted in a fair and dispassionate manner." *Haley* v. *Ohio*, 332 U.S. 596, 600.

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[35] In contrast to the power wielded against petitioner, such warnings were at most trivial. In any case, petitioner can hardly be held accountable for not demanding counsel in view of his mentality. *Fikes* v. *Alabama*, 352 U.S. 191, 193; *Gallegos* v. *Colorado*, 370 U.S. 49, ——.

The day after the alleged confession, July 31, 1961, petitioner was transferred by court order from the Madison County jail to the Hinds County jail for "safekeeping" (R. 2). He was held incommunicado, even his wife being denied the right to visit him.[26]

Two days after his arrest, on August 1, 1961, petitioner was finally taken before a judicial officer. Without benefit of counsel he waived a preliminary hearing.

Amazing as it may seem in this capital case, petitioner had no counsel until a local white attorney was appointed by the court at the time of his arraignment on September 21, 1961, fifty-three days after his arrest, and only four days before trial.

In view of the "totality of circumstances" just set forth, can it possibly be maintained that the confession in this case was not the result of an "overborne will"? We think not. *Malinski* v. *New York*, 324 U.S. 401, 404-407; *Lomax* v. *Texas*, 313 U.S. 544; *Reeves* v. *Alabama*, 348 U.S. 891.

Twelve hours of continuous questioning, beginning early in the morning, without benefit of counsel or communication with friends, after an illegal arrest and during a period of illegal detention, is itself sufficient to vitiate the confession. *Spano* v. *New York*; 360 U.S. 315, 322.

But, there is much more. This Court has emphasized the importance of subjective elements in determining whether a confession was the result of an act of free will:

> "The limits in any case depend upon a weighing of the circumstances of pressure against the power of resistance of the person confessing. What would be

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[26] Affidavit of Mary Nell Smith, Appendix.

overpowering to the weak of will or mind might be utterly ineffective against an experienced criminal." *Stein* v. *New York*, 364 U.S. 156, 185.

The accused in this case is a young, illiterate Negro charged with raping a white girl in Mississippi. The fear which a Negro in the Deep South feels when so accused obviously makes him especially susceptible to the coercive impact of the forces brought to bear by the police.

According to their own admissions, the police told petitioner shortly before he confessed that the polygraph proved he was lying when he denied his guilt. Obviously petitioner had no way of knowing that the results of a polygraph test are not admissible evidence. In view of his ignorance, fear, and apparent superstitiousness, there can be little doubt that the use of the polygraph must have terrified petitioner and convinced him that his situation was hopeless.

As if this were not enough, petitioner was told by the police and by James Matlock that Matlock had already implicated him in the alleged crime, and he was forced to confront Matlock, his accuser. Afraid, alone, without counsel, ignorant of his right to remain silent, his fate already sealed by a machine which he could not understand, accused by one who he thought was his friend, no reason could possibly have appeared to petitioner for not confessing.

An "uneducated, superstitious" Negro who "worshipped at the shrine of sorcery, voodoo and witchcraft and who was easily influenced by anything smacking of the supernatural" is no match for the police and the polygraph.

D. The Jury Was Misdirected by Wrong Constitutional Standards When Instructed by the Trial Court on Its Treatment of the Alleged Confession.

The jury was instructed, with respect to the confession introduced against petitioner that

> "... if you believe from the evidence that the alleged confession was untrue you should disregard it or if you believe from evidence that it was made under the influence of hope or fear, you may take this into account in determining what weight or credit, if any you may attach to it as evidence" (R. 7).[37]

By its terms, the instruction informed the jurors that even if they found that the confession was obtained involuntarily—that is, through hope or fear—they could nonetheless take it into consideration in arriving at their verdict. This instruction is constitutionally invalid, for a confession obtained involuntarily must be excluded from evidence entirely. *Reck* v. *Pate*, 367 U.S. 433; *Culombe* v. *Connecticut*, 367 U.S. 568.

It is far from clear what the trial judge had in mind in speaking of "hope or fear" in the context of the superficial instruction he gave the jury. Perhaps, like the court below, it was "fear . . . of the truth and its consequences" (R. 127). If so, he should have spelled it out. But it is entirely consistent with the testimony presented to the jury to conclude that it was the "hope or fear" engendered by twelve hours of interrogation by five armed law enforcement officers, plus a polygraph test, of a poor Negro with two years of education, fearful of mob violence in a rural

[37] The record does not show whether or not this was a requested instruction, but no objection was offered. In any case, the failure of petitioner's court-appointed counsel to note its constitutional defects is but one more example of his ineffective representation.

Mississippi town. Because of this cursory and ambiguous instruction, the jurors could reasonably have concluded that even if the confession had been induced involuntarily through fear, it could nonetheless be weighed as evidence.

The "determination of the admissibility of confessions is, of course, a matter of local procedure." *Rogers* v. *Richmond*, 365 U.S. 534, 545, n. 3. Mississippi practice purports to leave the question of admissibility of a confession entirely in the hands of the trial judge. *Brooks* v. *State*, 178 Miss. 575, 173 So. 409; *Forman* v. *State*, —— Miss. ——, 70 So.2d 848; *Jones* v. *State*, —— Miss. ——, 88 So.2d 91. Once admitted, the jury may "give it such weight and credibility as they think it is entitled. They should not reject it entirely unless they believe from the evidence it is false." *Brooks* v. *State*, 173 So. at 411.

This may be a perfectly constitutional practice in theory.[38] However, once the jury is led to believe that in considering the weight to be assigned a confession, it has authority to consider those facts which are necessarily components of a determination whether the confession is admissible, it must be instructed in accordance with correct constitutional standards. *Rogers* v. *Richmond*, *supra*, at 544-546, 547-48.

In *Lyons* v. *Oklahoma*, 322 U.S. 596, 601, this Court said:

> "The question of how specific an instruction in a state court must be upon the involuntary character of a confession is, as a matter of procedure or practice, solely for the courts of the state. When the state-approved instruction *fairly raises the question of whether or not the challenged confession was voluntary*, as this in-

[38] But compare the federal practice, where both judge and jury must pass on admissibility. *Wilson* v. *United States*, 162 U.S. 613; *Smith* v. *United States*, 268 F.2d 416, 421.

struction did, the requirements of due process, under the Fourteenth Amendment, are satisfied and this Court will not require a modification of local practice to meet views that it might have as to the advantages of concreteness." (Emphasis added.)

Oklahoma practice, unlike Mississippi practice, allows the jury to pass on a confession's admissibility subsequent to the trial judge's initial determination of admissibility, and the Court in *Lyons* found that the jury had been adequately instructed on the constitutional standards it was to apply. Among other things, the jury was told that the confession was to be "rejected if obtained by punishment, intimidation or threats." Though even that charge leaves much to be desired (see *Culombe* v. *Connecticut*, *supra*, at 603-606), it can at least be said that the jury was explicitly instructed that it must exclude the confession if it was found to be involuntary.[39]

In the case at bar, the jurors were told to consider whether the confession was obtained by "hope or fear," though the meaning of that phrase was undefined. They may well have considered, therefore, those elements of "hope or fear" that constitute the basis of a finding that the confession was involuntary, "i.e., the product of coercion, either physical or psychological . . ." *Rogers* v. *Richmond*, *supra*, at 540. If so, they should have excluded the confession from their deliberations. However, contrary to *Lyons*, they were not expressly so instructed. Consequently, the jury was "misdirected by wrong constitutional standards." *Rogers* v. *Richmond*, *supra*, at 545.

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[39] See too the charge in *Stein* v. *New York*, 346 U.S. 156, 173, n. 17.

Conclusion

Petitioner was arrested without probable cause, held in detention unconstitutionally, subjected to coercive forces until he confessed, denied counsel at a crucial pre-trial juncture, denied the right to counsel for fifty-three days, and finally was represented ineffectively at trial by his court-appointed attorney.

From the time of his arrest until the day of his conviction, petitioner was treated unfairly by every agency of the state with which he had contact. He was deprived of due process of law every step of the way. Consequently, petitioner's conviction below must be reversed.

Respectfully submitted.

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March, 1963

APPENDIX

Affidavit*

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, Mary Nell Smith, of 106 Church Street, Canton, County of Madison, State of Mississippi, make the following statement on my own free will:

1. My husband, William Smith, Jr., was arrested about 2:00 a.m. on Sunday, July 30th, 1961, by Madison County deputy sheriff, Dick Stone and another officer. I do not know his name. My husband was taken to the Madison County Jail; we did not see him again until about 7:00 or 7:30 p.m. of the same evening. Sheriff Billy Noble, State Highway Patrol Officer Charles Snodgrass, Allen Halbert, city policeman, and several other officers who I did not know brought him to our house. They drove up in two cars.

When the officers brought my husband into the room, I saw that my husband's head had been cut open by a blow, as he later told me. He did not have a cut on his head that morning about 2:30 a.m. when the officers first took him away. Others in the house also saw this cut on his head—my brother, Fred Jones, Jr., my mother, Julia Jones, my step-father, Fred Jones, and a friend, Rosetta Body. My husband could not think clearly after he received the blow on the head. He spoke to one of the white police officers, calling him by my brother's name. My brother is a dark-skinned Negro. My husband also asked me who was the colored man wearing glasses in the room; he was talking about a white man who wore glasses there.

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* The original of this affidavit & the four succeeding affidavits are in the office of petitioner's counsel.

Later my husband told me that they beat him again the second time at the Hinds County Jail with other prisoners looking on. He told me the names of the prisoners but I don't remember them now. He told me all this several weeks after he was picked up and jailed. When I asked him about the first beating, when he received the cut on the head after his arrest, he told me that Sheriff Billy Noble had hit him and this cut his head. He did not say what the sheriff struck him with at the time.

2. My husband was held incommunicado for a period of 30 days. He was not permitted to phone anyone, to call a lawyer, or to call any member of his family to tell us where he was being held. During this period, I phoned the sheriff, Billy Noble, many times, trying to locate my husband. The sheriff told me that my husband was not in the Madison County Jail, but he would not tell me where he was. I asked permission to visit my husband many times, but the sheriff would not let me.

An acquaintance from Madison County had been in Jackson and was arrested and jailed. He saw my husband there in the Hinds County Jail, knew him, and came and told me after this man (the acquaintance) was released. He brought a note from my husband, which my husband had dictated to another prisoner, because my husband cannot write.

3. The court appointed a lawyer, Mr. Jack Graves, on Friday, the day of the arraignment. The lawyer had not talked to my husband before this time. The trial date was set for the following Monday. This left only three days to prepare for the trial. On Saturday, I went to Mr. Graves office with my husband's cousin, Lola. He met us at the door and told us that he was too busy to talk. I told him that I had information that I felt he would need. The officers had taken a pair of khaki trousers from our house the night they arrested him; they thought he had worn

them that night. Three witnesses, Willie Leonard, Robert Johnson, and Jimmy Thomas, and our family as well, knew that my husband had worn grey pants that night. Mr. Graves was not interested in this information that I tried to give him. He told me that he had all the information he needed.

4. The night they arrested my husband, the officers took the khaki pants from our house. The pants were still damp. My husband had worn them while killing a chicken for my mother, then he took a bath, laid the pants on the floor by the tub that leaks and stepped out on them, using them for a rug. When he left the house to go out that Saturday afternoon, before dark, he was wearing grey pants, not the khaki pants. He was still wearing these grey pants when he returned home Sunday morning between 12:00 and 1:00 a.m.

I have read the following statements and attest that they are true and accurate to the best of my knowledge.

/s/ Mary Nell Smith
Mary Nell Smith

This is to certify that the above person did personally appear before me on Feb. 6, 1963, and affix her signature hereon.

/s/ Illegible
Notary

My commission expires on March 31, 1965.

Affidavit

STATE OF MISSISSIPPI
COUNTY OF MADISON

I, Robert Lee Johnson, of Post Office Box 170, Canton, County of Madison, State of Mississippi, make the following statement on my own free will:

I and a few of my friends, William Smith, Jr., Robert Lee Body, and another whom I do not remember, were playing a card game called Whist in Walters Snack Shack on July 29, 1961, Saturday, at about 4:00 or 4:30 p.m.

William Smith, Jr. had entered the grill between 4:00 and 4:30 p.m. and started playing Whist with us. I noticed that when William entered Walter's Snack Shack he was wearing a pair of grey cotton dress slacks. I do not remember when William left the Snack Shack, but it was just before dark.

I have read the preceding statements and attest that they are true and accurate to the best of my knowledge.

/s/ ROBERT LEE JOHNSON
Robert Lee Johnson

This is to certify that the above person did personally appear before me on February 7, 1963, and affix his signature hereon.

/s/ V. A. SIMS, Chancery Clerk

By /s/ HAZEL E. WEST DC

My commission expires on Jan. 1, 1964.

Affidavit

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, ROSETTA BODY, of 217 Main, Canton, County of Madison, State of Mississippi, make the following statement on my own free will:

I entered the house where Mr. and Mrs. William Smith, Jr. were living with Mr. and Mrs. Fred Jones on Sunday, July 30, 1961, between 7:30 and 8:00 p.m. The police had returned William to the house, and they were searching the house for evidence. When I saw William, there was blood running from a cut on the back of his head. I could not see the size of the cut because of the hair that was covering it.

I have known William for about 5 years prior to his arrest. During this time I had lived about 1 block from his home. His wife is my first cousin, he and his wife had been very close friends of mine.

When I entered the house William did not recognize me. I carried my 11 month old baby into the house with me and this was the only person with me. Later, Mary, William's wife, told me that William had asked who the girl with the baby was, and who the boy was with her. When I entered the house there was no one with me but my 11 month old child.

I have read the preceding statements and attest that they are true and accurate to the best of my knowledge.

/s/ Rosetta Body
Rosetta Body

This is to certify that the above person did personally appear before me on February 8, 1963, and affix her signature hereon.

/s/ Illegible
Notary

My commission expires on 3/31 1965.

Affidavit

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, JULIA MAE JONES, of 106 Church Street, Canton, County of Madison, State of Mississippi, make the following statement on my own free will:

Sometime after midnight the police officers came to the house and woke us up saying they wanted William. I did not know if William were home because he was not home when I went to bed. William was in bed and they made him dress and they carried him away. My daughter had asked deputy Stone what my son-in-law had done and he answered many things have been done tonight. I can't tell you now what William has done but I will tell you later. When William left the house I did not see any cuts on his head.

The officers returned to the house later in the day, Sunday, July 30, 1961, to get William's clothing. We gathered all of his clothing and put it in a paper shopping bag for them. They, the police officers, asked what pants he wore on Saturday, July 29, 1961, when he left the house. I told them I did not know for sure but I thought he was wearing a pair of grey dress trousers. They said no he was wearing a pair of khaki pants. William only had one pair of khaki pants and he wore them Saturday to do chores around the house. He had wore this pair of pants to kill a chicken for me. In the past, William had always made it a practice to dress in his best clothes on Saturday evening. Later, the officers found this pair of khaki pants in the dirty clothes and they said this is what he was wearing. My daughter explained that they were wet because he had killed a chicken in there and had used them to mop up the bath water that had spilled on the floor. I did not see William

when he left the house but I do know that the khaki pants were dirty because of the chores he had done around the house.

When William left the house about 4:00 p.m., Saturday, July 29, 1961, he did not return home between that time and when I went to bed. I do not know what time I went to bed, but I usually go about 9:00 p.m.

The officers brought William back home Sunday evening, July 30, 1961, about 7:00 p.m. The sheriff, Billy Noble, came into the house first to tell us that they wanted to search the house. Mr. Snodgrass, State Highway Patrol, brought William into the house. William had dried blood on his face and there was a cut about 1½ to 2 inches on the top of his head. When William left the house, he had no cuts on his head.

When they returned William to the house he acted very confused. He called one of the white police officers brother, a name he usually called my son, Fred Jones, Jr. By William, I have been referring to William Smith, Jr., my son-in-law.

I have read the preceding statements and attest that they are true and accurate to the best of my knowledge.

/s/ Julia Mae Jones
Julia Mae Jones

This is to certify that the above person did personally appear before me on February 8, 1963, and affixed her signature hereon.

/s/ Illegible
Notary

My commission expires on 3/31 1963.

Affidavit

I, William L. Higgs, an attorney of Jackson, Mississippi, hereby swear, affirm, and make affidavit to the following facts:

Prior to the Friday arraignment and appointment of counsel for William Smith, Negro, of Canton, Mississippi, I had been requested by his wife and mother-in-law through Rev. Thomas Johnson to represent him at his trial in Canton. Smith also requested me to represent him when I first saw him and talked to him in the Hinds County Jail in Jackson, Mississippi. On Friday morning, the day of the scheduled arraignment and appointment of counsel, I called Circuit Judge Leon Hendrick in the courthouse in Canton and told him that I had been requested to represent Smith and that I intended to do so. Judge Hendrick, who also presides in Hinds County, where I practice law, took about five minutes to make it very clear to me that I had no business in this case and that it would be dangerous for me to take the case. His own personal threat was clear to me. He said that Smith was having "a perfectly good attorney in Canton appointed to represent him." I followed his "suggestion." I did not represent Smith at this point in court. In addition, I felt that my life would be in great danger if I represented Smith in the emotion-charged atmosphere in Canton. I might add that I felt that it would be unwise to in this way further endanger my other civil rights activities that I had up to this point been able to carry on without too extreme and disabling reprisals.

/s/ William L. Higgs

Sworn to before me this 25th day of February, 1963.

/s/ MELVIN L. WULF

Melvin L. Wulf
Notary Public, State of New York
Qualified in New York County
Commission Expires March 30, 1963

Office Supreme Court, U.S.
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APR 11 1963
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No. 667

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1962

WILLIAM SMITH, JR. — Petitioner

vs.

STATE OF MISSISSIPPI — Respondent

BRIEF FOR RESPONDENT

JOE T. PATTERSON, Attorney General
G. GARLAND LYELL, JR.
Assistant Attorney General
New Capitol Building
Jackson, Mississippi
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 667

WILLIAM SMITH, JR. ..... Petitioner

vs.

STATE OF MISSISSIPPI ..... Respondent

BRIEF FOR RESPONDENT

STATEMENT OF FACTS

The guilt or innocence of petitioner is not seriously questioned on this appeal. The proof of guilt is overwhelming. About midnight of the night of Saturday, July 30, 1961, Aleece Gober and James Myers, ages 14 and 17 respectively, were seated in a car listening to the radio on a rural road out from the Town of Canton in Madison County, Mississippi when appellant's presence was first noted by the odor of whiskey. They had not heard him because of the radio. After noticing the smell of whiskey, a Negro man with a goatee appeared on the righthand side of the car and at the point of a knife robbed the boy of his wallet and watch. The girl had no money. Petitioner got into the car with the knife first on the boy's throat and then on the girl's and forced them to drive to an even more remote spot at the edge of a corn field. They were then ordered through a barbed wire fence and out into the field. Petitioner told the girl, * * * "Since they didn't have no money, I would 'take pay out on her'." He then forced them back into the

car and told them they could find the keys to the car at a fork in the road. The boy and girl then made their way across a field to the home of a Mr. Craft, where the boy telephoned home and the Sheriff was called. The clothes of both the boy and girl were bloody and a cloth was wrapped around the girl's hand where it had been cut by petitioner's knife in resisting him. The girl was immediately taken to a hospital in Canton where a doctor examined her. It was the doctor's definite conclusion from bruises and a ruptured hymen, plus the presence of male sperm, that she had undergone very recent forcible intercourse. Examination indicated no previous intercourse.

By about 4:30 A.M. officers, including a Canton police officer with a police dog, picked up petitioner's scent where the keys had been left in the road and followed his trail to his home where he was taken into custody. Later in the day appellant and several others were one by one interviewed in the hearing of the boy and girl and he was identified by his voice. That afternoon he was taken from the jail in Canton to the Headquarters of the Mississippi Highway Safety Patrol, a distance of about twenty miles, where he was confronted by James Matlock. Matlock and petitioner were together immediately prior to the commission of this crime and Matlock had let petitioner out of his car to go rob this young couple. He was to receive part of the proceeds of the robbery. Matlock implicated petitioner and petitioner was also given a polygraph test. Upon being advised of his implication by Matlock and that the polygraph indicated he was lying, petitioner admitted his guilt, detailed his whole course of action, took the officers to his home (they obtained a search warrant first) and directed them to the hiding place of the knife used, the watch taken from

the Myers' boy and the pants worn by petitioner at the time of the rape. A pubic hair taken from the zipper of these pants was sent to the F B I Laboratory where it was compared with a sample from the person of the girl. The examining agent testified at the trial as to the similarity of the hairs in color and other characteristics.

Petitioner's confession, which was transcribed by investigating officers and signed by him, is contained in a box of exhibits transmitted to this Court along with the trial transcript.

ARGUMENT

RIGHT OF COUNSEL

A. AT TIME OF ARREST.

There is no authority cited by petitioner nor found by this writer which requires appointment of counsel or access to counsel immediately upon an arrest and prior to a confession. A confession is not a pre-trial proceeding requiring assistance of counsel. Petitioner, prior to confession, was advised of his right to counsel but he did not request counsel. Even had he requested counsel, there is not necessarily a violation of due process. Speaking for this Court in *Cicenia vs. LaGay*, 357 U.S. 504, Mr. Justice Harlan, in weighing the right to counsel on one hand and an unreasonable constriction on state police activities which would impair their ability to solve difficult cases, reaffirmed *Crooker vs. California*, 357 U.S. 433, that, in judging whether state prosecutions meet the requirements of due process, this Court has sought to achieve, not a strict formula, but to determine from all the circumstances whether a conviction was attended by fundamental fairness or unfairness. There is nothing in this record to indicate that petitioner was subjected

to the "inquisition" that he would lead this Court to find, nor that his interrogation was unreasonably prolonged, nor that "during this entire period he existed in terror of mob violence." While a certain latitude and license may be enjoyed by counsel in pleading his case, it is respectfully submitted that none of these things existed, nor are they reflected or even intimated by the record.

Furthermore, appellant was not alone at the time of his confession, but was accompanied by his good friend and companion of the night before, James Matlock, who was instrumental in the procurement of the confession by his accusation of petitioner.

B. AT THE TIME OF THE PRELIMINARY HEARING.

The record in this case is entirely silent with respect to a preliminary hearing. Therefore, without a separate evidentiary hearing, this Court will never know whether or not petitioner had counsel when he waived a preliminary hearing. This writer cannot conceive of this Court determining as a fact that petitioner was without counsel when he waived preliminary hearing by mere reference in petitioner's brief to an item in the Madison County Herald, a newspaper published at Canton, Mississippi, which allegedly published as a fact that petitioner had waived examination, but so far as can be told from the brief reference, makes no mention of whether or not he had counsel.

Even so, the mere waiver of a preliminary hearing could not have been prejudicial to petitioner's rights, since he is not called upon to divulge anything prejudicial and, rape being a capital offense in Mississippi, no question of his right to bail could have been resolved at such a hearing. A preliminary hearing in Mississippi is not

like an arraignment and, consequently, *Hamilton vs. Alabama*, 368 U.S. 52, does not apply. While Mississippi law requires the taking of an offender before a proper officer without unnecessary delay, Mississippi Code of 1942, Recompiled, Section 2473; such requirement is to prevent unreasonably long detentions before making a charge, *Sheffield vs. State*, (Miss.) 28 So. 2d 745, yet such a preliminary hearing is not a prerequisite to the validity of a criminal trial and prosecution. *Conn vs. State*, (Miss.) 105 So. 2d 760.

It cannot be said from the record in this case that the absence of counsel, if a fact, at the preliminary hearing, if there was one, in any respect made his subsequent trial an unfair one. The converse may have been true had all the sordid details of this crime been aired to the public as a preview of what was to come later at the subsequent term of the Circuit Court.

C. THE EFFECTIVENESS OF COURT-APPOINTED COUNSEL. THE NEED TO LOOK BEYOND THE RECORD.

Petitioner questions the effectiveness of his Court-appointed counsel, one of the most experienced and successful lawyers in the defense of criminal cases in Madison County, Mississippi. In his petition for certiorari herein, petitioner recognizes that the Court-appointed counsel was "an experienced trial attorney." While recognizing that the Court appointed an experienced trial attorney, he would now, by affidavits attached to his brief, have this Court believe that the attorney, either through purpose or dereliction, failed to adequately investigate the case and properly represent him. In the absence of any evidence to the contrary, attorneys are presumed to have sufficient skill and learning to defend

an accused adequately. *Wooddell vs. State*, (Md.) 162 A 2d 468; *State vs. Griffith*, (Wash.) 328 P 2d 897. In spite of the allegations of the petition herein, considering the nature of this case and the discretion of counsel in his trial tactics, the record reflects that petitioner was adequately defended. Cf. *State vs. Graeber*, (Wash.) 283 P 2d 974, cert. den., 350 U.S. 938, cert. den., 351 U.S. 970.

No two lawyers will defend a case alike. Petitioner recognizes his counsel as an experienced trial attorney and, therefore, the presumption is that his tactics and strategy at the trial were such as in his own mind best calculated to elicit some degree of sympathy from the jury and save his client from the death penalty. Any jury would have found petitioner guilty and his only hope was to receive a life sentence rather than death.

Practically all of petitioner's argument on this appeal is predicated upon so-called affidavits attached as an appendix to his brief. These affidavits have no place before this Court. In *Hopt vs. Utah*, 114 U.S. 488, a similar thing was done and this Court held that the lawfulness of the conviction and sentence of a person accused of crime is to be determined by the formal record, made up and transmitted as required by law, of what was done in his presence at the trial in open court and that ex parte affidavits concerning events, taken since the entry of the case in the Supreme Court, cannot be considered.

However, inasmuch as these affidavits were attached to petitioner's brief, the Court's attention is directed to the fact that four of them are not sworn to but merely have a certificate by a notary public to the effect that they were signed in his presence. Therefore, they do not even have the status of an affidavit. As to the affidavit by William L. Higgs, while he is counsel of record in this

case, by attaching his affidavit he has also attempted to become a witness before this Court. Having become a witness, it was felt necessary to answer the scurrilous charge made against Circuit Judge L. F. Hendrick, one of the most respected judges in the South, a man of the highest personal and judicial integrity, and to that end there is attached as an appendix to this brief an affidavit by Judge Hendrick relating the true facts with respect to Mr. Higgs' telephonic communication with him. For the further information of the Court as it relates to the credibility of Mr. Higgs, there are attached hereto certified copies of a criminal affidavit and judgment of conviction of Mr. Higgs in the County Court of Hinds County, Mississippi showing him to have been charged and convicted of contributing to the delinquency of a minor by acts of sodomy and other sexual perversion, since which time he has been a fugitive from justice. In addition, a committee of the Bar Association is now preparing to institute disbarment proceedings against him.

1. THE MEANING OF EFFECTIVENESS.

(a) COUNSEL MOST LIKELY TO BE EFFECTIVE IS COUNSEL OF ONES OWN CHOICE.

The State of Mississippi has no argument with this principle. Anyone is entitled to counsel of his own choice if he is in a position to employ him. Not having been advised that Mr. Higgs was representing petitioner, at the earliest opportunity afforded him, the Court appointed an experienced trial lawyer to represent him. It is difficult to determine by what standards petitioner would have this Court judge the effectiveness of Court-appointed counsel. In his own affidavit, Mr. Higgs, one of petitioner's counsel, stated under oath that "Smith also requested me to represent him when I first saw him

and talked to him in the Hinds County Jail in Jackson, Mississippi." Where was Mr. Higgs between that time and the time Circuit Court convened in Madison County, Mississippi? If that is a true statement, the only conclusion that can be drawn is that he made a careful investigation of petitioner's case and came to the same conclusion as did Court-appointed counsel.

(b) AS TO COUNSEL'S INVESTIGATION OF THE CASE.

(c) AS TO THE QUALITY OF THE INVESTIGATION.

As in *Avery vs. Alabama,* 308 U.S. 444, cited by petitioner, there is nothing in this record to indicate how long Court-appointed counsel consulted with petitioner, what investigation he made, what he found, and "its every angle is illuminated by the absence of any indication * * * that they (he) could have done more had additional time been granted."

Here again this Court will only consider the record in this case and not the matters and things alleged in the affidavits attached to petitioner's brief.

(d) COUNSEL'S TACTICS AT THE TRIAL.

For obvious reasons, a large amount of discretion must be given counsel while conducting a trial and courts are reluctant to find an abuse of that discretion. This principle is admitted by petitioner and stated in his brief. *Brubaker vs. Dickson,* 310 Fed. 2d 30, is ample authority for denial of relief by this Court. Brubaker was a habeas corpus case, as this should be. As stated in Brubaker, when inadequate representation is alleged, the critical factual inquiry ordinarily relates to matters outside the trial record. Where the trial counsel consulted suffici-

ently with the accused, and adequately investigated the facts and the law; whether the omissions charged to trial counsel resulted from inadequate preparation rather than from unwise choices of trial facts and strategy. There is no denying that petitioner should be afforded an opportunity to support his allegations by proper proof, if he can make it, in an evidentiary proceeding in an evidentiary court, not in the Supreme Court. This Court cannot determine the truth or falsity of the allegations of the affidavits attached to petitioner's brief nor of the ex parte statements of counsel in their argument. That can only be done in an evidentiary proceeding where the witnesses, under oath, would be subjected to cross-examination.

2. PETITIONER'S PARTICULAR NEED FOR EFFECTIVE COUNSEL.

There is no denying that petitioner needed effective counsel. For that reason the trial court appointed an experienced trial lawyer who, according to the affidavit of Judge L. F. Hendrick attached hereto, is one of the most successful lawyers in criminal cases in that section of the State of Mississippi involved. Counsel for petitioner has failed to show, except by the so-called affidavits, which will not be considered by this Court, that any other counsel could have obtained a different result.

Counsel for petitioner would have this Court take judicial notice of the alleged fact that the State of Mississippi was, at the time of the trial, a hot bed of hostility to Negroes. It is submitted with deference but in all candor that such a statement has no place in this brief or in any other document submitted to this or any other court. First, we respectfully point out that such a statement is untrue. There has never existed in Mississippi

any hostility on the part of the general populace thereof toward Negroes or toward the members of any race of people. This writer as a representative of the people of Mississippi expresses to the Court his personal resentment toward the statement of the petitioner. It is done with full realization that personal sentiments have no place in a legal brief before this Court but, because of the charge made against the people of Mississippi, the writer feels that he is compelled to refute the same.

Secondly, it is respectfully pointed out that the record contains not the slightest scintilla of evidence that Mississippi was, at the time of the trial or at any other time, a "hot bed of hostility to Negroes." Petitioner has not cited any authority that this Court or any other Court may at any time take judicial notice of the attitude of the people on any particular question. While it is not asked to be taken as evidence by this Court, it was necessary to attach hereto the affidavit of Circuit Judge L. F. Hendrick to refute the charge of William L. Higgs. The affidavit of Judge Hendrick states that the atmosphere in Canton was not emotion-charged. This is the only credible statement anywhere in this record or in the briefs on this subject.

3. AS TO COUNSEL'S CONDUCT AND HIS EFFECTIVENESS.

Hereunder in five separate categories petitioner argues that Court-appointed counsel neglected his constitutional responsibilities.

(a) COUNSEL WAS GIVEN TOO LITTLE TIME IN WHICH TO PROPERLY PREPARE A DEFENSE IN A CAPITAL CASE.

This Court should bear in mind that, while this was a most serious case, it is not the type of case which would

be at all difficult to investigate, nor would a great deal of time be necessary to throughly investigate it. Witnesses were few. In a day's time counsel could have interviewed all of them. They were all in the same community or only twenty miles away at the Mississippi State Highway Patrol Headquarters. An attorney of the experience of Court-appointed counsel in this case would certainly have moved for a continuance had he not been satisfied that his investigation was thorough. Furthermore, the trial court would certainly have granted a continuance on any reasonable showing. This writer is hesitant to make a statement of fact not in the transcribed record in this case, but in view of the manner in which petitioner states his argument, it must be said that Canton, Mississippi is a relatively small town and that the rest of Madison County is almost entirely rural. To say that counsel could not have investigated this case in the time he had but should have moved for a continuance is a conclusion not based upon any facts revealed by the record and there is certainly no precedent from this or any other court laying down any hard and fast rule as to how long counsel must be allowed to make his investigation. This Court recognized just such a situation in *Avery vs. Alabama*, 308 U.S. 444, 452, wherein this Court recognized that, unlike metropolitan centers, people in such rural counties know each other, and information concerning witnesses and events is more widespread and more generally known than in large cities, enabling attorneys to make their inquiries in much less time.

(b) AS TO COUNSEL'S FAILURE TO CONFER WITH ALLEGED VITAL WITNESSES.

This argument is predicated entirely upon the "affidavits" of Mrs. Smith, Julia Mae Jones and Rosetta Body. As pointed out hereinabove, these are not affi-

davits. They are not sworn to, the allegations therein were not before the trial court and they have no place in petitioner's brief. Under *Hopt vs. Utah*, 114 U.S. 488, supra, they will not be considered by this Court in disposing of this case. As with the other affidavits attached to petitioner's brief, the State of Mississippi has not had the privilege of cross-examining the affiants nor of producing witnesses to contradict them. If these witnesses are willing to make the same statements under oath, there is a forum afforded petitioner and a remedy by petition for writ of habeas corpus in the United States District Court.

(c) AS TO COUNSEL'S FAILURE TO MOVE FOR A CHANGE OF VENUE.

Hereunder it is argued that ill will existed in Madison County against petitioner at the time of his trial, yet petitioner does not make any reference to the record where such evidence can be found. Once again petitioner refers to certain news items in Jackson, Mississippi newspapers and the Madison County Herald, quoting from the latter to the effect that at the time petitioner waived a preliminary examination the courthouse was cleared of spectators and afterwards petitioner and his companion of the night, James Matlock, were returned to an undisclosed jail. There are no sinister implications from these facts, if they are facts. It is the common practice, out of deference to the prosecutrix in Mississippi to clear the courtroom of all persons except such as are necessary in the conduct of the trial. This is not only the practice in Mississippi but authorized by Section 26 of the Mississippi Constitution of 1890.

Petitioner also attempts to make capital of the fact that on the day after his arrest, on motion of the District

Attorney, petitioner was ordered transferred from the Madison County, Mississippi Jail to the Jail in the First Judicial District of Hinds County, Mississippi (Jackson). Section 2499, Mississippi Code of 1942, Recompiled, provides for such removal, if, in the opinion of the judge, the county jail is insufficient for the safekeeping of the prisoner. The conclusion argued by petitioner and the inference therefrom which this Court might draw is that petitioner was moved to avoid mob violence. Nothing could be further from the truth. Such argument again puts this writer in the regrettable position of having to make a statement of fact which does not appear in the record. Removal of prisoners under the last quoted statute is a common practice in Mississippi where counties like Madison, in which this crime was committed, have no jail or have a jail which is so old and ill equipped as not to be a fit place to keep a prisoner for any length of time. Had any such point been raised in the trial court or should it be raised in any evidentiary proceeding in connection with this case, the proof would show that the jail in Madison County is so old and ill equipped that it is not suitable and is not a fit place to keep any prisoner for any length of time. For many years every non-bailable accused or convict has been transferred from the Madison County Jail to the Hinds County Jail and the fact of such transfer of petitioner cannot in any way lend any credence to his contradicted testimony that he was threatened with return to Madison County where a mob could get him.

(d) AS TO COUNSEL'S FAILURE TO INQUIRE WHETHER NEGROES WERE SYSTMATICALLY EXCLUDED FROM THE GRAND JURY AND THE PETIT JURY.

Here again petitioner makes the bald accusation that his Court-appointed counsel "made no investigation of the possibility of systematic exclusion of Negroes from the juries." This may very well be true. However, there is a very good answer to why counsel may have made no such investigation, but this answer involved further statement of facts by this writer which have no place in this brief but which must be made in view of petitioner's charge against trial counsel. A Negro defendant in Mississippi need not resort to the Federal Courts for relief when members of his race have been systematically excluded from jury service. The earliest Mississippi case is *Farrow vs. State*, (Miss.) 45 So. 619. The latest is *Gordon vs. State*, (Miss.), 140 So. 2d 88. However, it is a matter of common knowledge now that the members of the Board of Supervisors in most, if not all, of the counties of this State have been placing the names of Negroes in the jury boxes each year, such of those who meet the requirements of being men of good intelligence, sound judgment and fair character and who do not possess the disqualifications enumerated in Section 1762 of the Mississippi Code of 1942, Recompiled, as to who are competent jurors. *Cameron vs. State*, (Miss.) 102 So. 2d 355.

The State of Mississippi is prepared to prove in a proper evidentiary proceeding in any court that there were Negroes not only on the grand jury which indicted petitioner but on the special venire drawn at his request.

Petitioner's counsel knew this and, therefore, he was not called upon to make any further investigation.

(e) AS TO COUNSEL'S EXAMINATION OF THE STATE'S WITNESSES.

Court-appointed counsel is criticized for his alleged failure to cross-examine the prosecutrix and his brief cross-examination of her companion.

Any lawyer with any trial experience in cases of this kind (and we believe there will be unanimity among this Court on this proposition) will readily recognize the danger in a vigorous cross-examination of the victim of a rape, particularly where she is a fourteen year old girl, her companion is a boy of seventeen years, there is no suggestion of a possible element of consent and absolutely nothing that could be developed by a vigorous cross-examination. To subject this girl and her young companion to the vigorous and pitiless cross-examination which petitioner now urges should have been made would certainly have prejudiced petitioner's case in the minds of the jury. In such cases it is always the better strategy to appear sympathetic and hope to get a life sentence. Petitioner argues that there was much to be inquired about, but does not set out what these thihgs might have been.

II.

THE CONFESSION

A.

THE CONFESSION WAS NOT THE FRUIT OF AN ILLEGAL ARREST.

Petitioner was not the victim of a "dragnet." As with the other points raised by petitioner, his argument with respect to the legality of the arrest is predicated upon conjecture and not upon the record. The only testimony in the record with respect to the arrest of petitioner is

that of the Sheriff (R. 16). Patrolman Hill, a Canton policeman, arrived with his dog at the spot where petitioner had left the car keys. The dog "took the track" and led the officers to petitioner. Other details of the arrest and other evidence of probable cause is not to be found in the record since the validity of the arrest was never questioned at the trial. In any event, in the absence of an applicable Federal statute (there is none here) the law of Mississippi determines the validity of the arrest. *United States vs. Di Ri*, 332 U.S. 581. Under Mississippi law evidence of tracking by trained dogs is admissible, and, being admissible, it certainly amounts to probable cause to make an arrest. *Hinton vs. State*, 166 So. 762. It is true that the Hinton case requires, when the question is raised properly, that there be proof that the dogs were reliable on trail and tested by tracking human beings and it goes without saying that, had the reliability of Patrolman Hill's dog been put in issue, such proof would have been forthcoming. Once again, Court-appointed counsel, being a resident of Canton, Mississippi, undoubtedly knew Patrolman Hill and his dog well and did not there question the reliability of the dog for fear of emphasizing the dog's reliability before the jury.

B.

THE CONFESSION WAS NOT OBTAINED DURING A PERIOD OF UNCONSTITUTIONAL DETENTION.

While Mississippi law requires the taking of an arrested person before a magistrate without unnecessary delay, Mississippi Code of 1942, Recompiled, Section 2473, a failure to do so, taken alone, will not invalidate a confession. *Winston et al vs. State*, (Miss.) 48 So. 2d 513; *Conn vs. State*, (Miss.) 105 So. 2d 760.

Even if this Court was inclined to extend the McNabb-Mallory rule to the States, this is not a case in which it can be done. Petitioner was arrested, interrogated and confessed on Sunday. Had the issue been raised at the trial, petitioner would have had the burden of proving that a magistrate was available on Sunday in order to bring a confession obtained that day within the rule. *United States vs. Walker*, (1949) CA 2d NY, 176 Fed. 2d 564, cert. den. 338 U.S. 891. Also, in *Robinson vs. State*, (Miss.) 77 So. 2d 265, cert. den. 350 U.S. 851, the arrest was on Sunday morning, on which day neither the grand jury nor a justice of the peace court was in session, and it was held that there was no illegal detention resulting in the confession that same Sunday afternoon.

C.

PETITIONER'S CONVICTION WAS NOT BASED ON AN INVOLUNTARY CONFESSION.

It is respectfully submitted that the "totality of circumstances" leading up to and surrounding petitioner's confession clearly demonstrates that it was a voluntary one.

(a) THE PETITIONER.

Petitioner cites no authority and will find none that a twenty-five year old Negro farm hand, who had attended school only to the second grade, is not capable of giving a perfectly voluntary confession. Petitioner is here adopting the same line that his Court-appointed counsel adopted in his argument before the Supreme Court of Mississippi and undoubtedly before the jury at the trial and on account of which petitioner is critical of Court-appointed counsel. Petitioner's guilt is so overwhelming that his counsel attempted to influence the

Mississippi Court by describing petitioner as "an uneducated, superstitious" Negro who "worshiped at the shrine of sorcery, voodoo and witchcraft, and who was easily influenced by anything smacking of the supernatural." This was a fair and good argument in an effort to convince the Mississippi Court that petitioner was overawed and influenced by the polygraph. How can petitioner criticize Court-appointed counsel when he is attempting to influence this Court by the very same argument?

(b) POLICE PRESSURE PRIOR TO PETITIONER'S CONFESSION.

Here again petitioner takes liberties with the record in this case with the statement that petitioner was illegally arrested without a warrant or probable cause. No such thing is reflected by the record. As pointed out hereinabove, the only evidence in the record on the question of the legality of his arrest is the evidence that the police dog trailed petitioner from where he left the keys to his house. If that is not sufficient probable cause, then the question of the legality of his arrest is still an open one and can only be explored in an evidentiary proceeding.

Nor is there anything in this record to indicate that petitioner was "continually questioned" nor "forcibly subjected" to a polygraph test. That these assertions are false is readily reflected by the record. It should be obvious to this Court that no one can be forced to take a polygraph test. A high degree of cooperation is absolutely essential. As to the interrogation, the record only reflects that petitioner, along with others, was interrogated in Canton in the hearing of the prosecutrix and the boy involved and that he was later that afternoon inter-

rogated at the office of the Mississippi State Highway Patrol.

(c) POLICE PRESSURE AFTER THE CONFESSION.

If there was any pressure of mistreatment of petitioner after he had confessed, it is not reflected by the record. Any such argument must necessarily be predicated upon the so-called affidavits attached to petitioner's brief which, as hereinabove pointed out, have no place in the brief, are not sworn to, and will not be considered by this Court.

A most comprehensive history and critique of this Court's decisions is the article by Wilfred J. Ritz in Volume XIX, No. 1, Washington and Lee Law Review, entitled Twenty-Five Years of State Criminal Confession Cases in the U. S. Supreme Court. As the author pointed out, there is no body of present law determining precisely what is illegal police conduct in obtaining confessions. Petitioner cites no authority condemning the use of a polygraph as an aid to a police investigation. It is a well known fact that practically all criminals who confess later repudiate the confessions or make the claim that they were induced through fear, duress, promise, etc. By whatever standards this Court judges this case, whether it looks to the "totality of circumstances", the "total facts" or the "badge of coercion" referred to by Mr. Ritz, it is earnestly believed that this Court will find from the record that the trial judge was correct in adjudging that, as a matter of both law and fact, petitioner's confession was a voluntary one. Petitioner's guilt is otherwise shown and the guilt of an accused is always of compelling relevancy to the question of whether or not the police methods in fact caused the accused to

confess, or whether the confession was a voluntary product of his guilt.

D.

THE JURY WAS NOT MISDIRECTED BY WRONG CONSTITUTIONAL STANDARDS.

It is respectfully submitted that, while the instruction complained of may be subject to some criticism for its wording, it is a fundamental rule of appellate practice in Mississippi that a defendant cannot complain on appeal of an instruction which he himself obtained. *Williams vs. State*, (Miss.) 49 So. 513; *Reed vs. State*, (Miss.) 112 So. 2d 533; *Musselwhite vs. State*, (Miss.) 54 So. 2d 911.

Furthermore, while it is not known by this writer whether the suggestion of error filed by petitioner in the Mississippi Supreme Court was made a part of the record in this Court, that suggestion of error was prepared and filed by William L. Higgs, one of counsel of record now in this Court, and no question was raised by him before the Mississippi Supreme Court with respect to the propriety of the instruction now complained of. Here again is an instance in which one of present counsel for petitioner failed to timely raise a question in the Mississippi Court and is now charging Court-appointed counsel with ineffective representation of petitioner on account of having obtained the instruction.

CONCLUSION

Petitioner's entire case as it is presented to this Court is predicated upon ex parte statements of counsel, an affidavit of one of petitioner's counsel and other signed statements referred to as affidavits but not, in fact, sworn to. This Court is not a trier of facts and as Mr. Justice Harlan said in his dissenting opinion in *Douglas and Meyes vs. California*, decided March 18, 1963, No. 34, October Term, 1962, "the kinds of questions that may arise on appeal are circumscribed by the record of the proceedings that led to the conviction; they do not encompass the large variety of practical and strategic problems that must be resolved at the trial."

Also, on March 18, 1963, this Court decided the cases of *Fay vs. Noia*, No. 84, and *Townsend vs. Sain*, No. 8. In these cases it was made very plain that this Court will not grant relief in such a case as this and that petitioner's relief, if any, should come from a Federal District Court in a habeas corpus proceeding, that court and that court only having the power the receive evidence and try the facts. In the case at bar there appears to be an unresolved factual dispute. As Mr. Chief Justice Warren stated in *Townsend vs. Sain*, "where an unresolved factual dispute exists, demeanor evidence is a significant factor in adjudging credibility. Questions of credibility, of course, are basic to resolution of conflicts in testimony. To be sure the State-Court record is competent evidence, and either party may choose to rely solely upon the evidence contained in that record, but the petitioner, and the State, must be given the opportunity to present other testimonial and documentary evidence relevant to the disputed issue."

There is another interesting procedural aspect of this case. Justices Harlan and Stuart observed in *Douglas*

and Meyes vs. California that the conduct of the parties in that case in dismissing their appointed counsel and their efforts to obtain a continuance were designed to delay the proceedings and, in all likelihood, to manufacture an appealable issue. The situation in the case at bar leads one to wonder if that was not done here. In his own affidavit, William L. Higgs, then a practicing attorney in Jackson, Mississippi, stated that petitioner had requested him to represent petitioner when he first saw petitioner and talked to him in the Hinds County Jail in Jackson, Mississippi. This was of necessity prior to the convening of the term of court at which appellant was taken to Canton for arraignment. His failure to appear when court met to represent his client was either from dereliction of duty that he would charge Court-appointed counsel with or from premeditated design to wait until steps had been taken toward the trial of petitioner and then fabricate just such a false affidavit as he has made after the case had run its course through the Courts of Mississippi.

Wherefore, it is respectfully submitted that the petition herein should be dismissed.

Respectfully submitted,

JOE T. PATTERSON, Attorney General

G. Garland Lyell Jr.

BY: G. GARLAND LYELL, JR.
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Jackson, Mississippi

CERTIFICATE

I, G. Garland Lyell, Jr., Assistant Attorney General of the State of Mississippi, do hereby certify that I have mailed a copy of the foregoing Brief for Respondent to counsel of record as follows:

Messrs. Melvin L. Wulf & Roland Watts
156 Fifth Avenue
New York 10, New York
Mr. Morris B. Abram
575 Madison Avenue
New York, N. Y.

by U. S. Mail, Postage Prepaid, by depositing same in the U. S. Mail Box in the New Capitol Building in the City of Jackson, Mississippi.

This 11th day of April A. D., 1963.

G. Garland Lyell Jr.

Assistant Attorney General

APPENDIX

No. 667

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1962

WILLIAM L. SMITH, JR. ..... Petitioner

vs.

STATE OF MISSISSIPPI ..... Respondent

AFFIDAVIT

I, L. F. Hendrick, of Jackson, Hinds County, Mississippi, make the following statement:

I am one of the judges for the Seventh Circuit Court District, State of Mississippi, and have been since September, 1954. Prior to that date I was a practicing attorney, having been admitted to the Bar in June, 1920. I am sixty-eight years of age.

A copy of the Brief for Petitioner in the above styled and numbered case has been furnished me, and my attention has been directed to the affidavit of William L. Higgs, appearing as part of the appendix on page 53. The only thing true about the affidavit, which has reference to me, is that Mr. Higgs called me over the telephone.

The facts are:

1. The September term of the Circuit Court of Madison County, Mississippi convened in Canton on Monday, September 18, 1961. A grand jury was drawn, sworn

and charged. One of the cases to be investigated was the charge against William Smith. I was informed that he did not have an attorney of his selection. On that date, September 18, 1961, I appointed Mr. Jack M. Greaves of the Madison County Bar to represent William Smith. Mr. Greaves is an attorney of many years experience. He is one of the most successful lawyers in criminal cases in that section of the State.

2. The grand jury returned indictments in open court on Wednesday, September 20, 1961. There was one against William Smith.

3. On Thursday, September 21, 1961 the indicted defendants were arraigned. Before the indictment was read to Smith and before any steps of arraignment were taken and before a plea, I inquired of him if he had his own attorney and if he could get one. His answer was "No." I told him that it was my duty to appoint one and that I had appointed Mr. Greaves, who stood with him on arraignment. After arraignment, as is the practice in this court, the case was set for call on September 22, 1961. Then, on September 22, 1961, Mr. Greaves made a motion for a special venire, which was granted.

4. On Friday, September 22, 1961, as I was getting ready to draw the special venire in open court on the second floor of the courthouse building, a message came that there was an emergency telephone call for me in the clerk's office on the first floor. I went immediately. It was Mr. Higgs calling me from Jackson. He stated that he had been contacted to represent William Smith. I told him that the venire was about to be drawn, returnable on Monday, September 25th; that if he was representing or going to represent Smith that it was his duty to come to Canton immediately and take whatever action

he thought necessary; that I had appointed Mr. Greaves; that I could not try any part of the case over the telephone. I did not tell Mr. Higgs that he had no business in the case. I did not assert, either in words or implication, that it would be dangerous for him to take the case. I did not make any personal threat to Mr. Higgs or any other kind of threat. There was no reason for Mr. Higgs to feel that his life would be in danger—if he is sincere in such statement. The atmosphere in Canton was not emotion-charged.

As a matter of fact, when Mr. Higgs called me I fully advised him of the status of the case, that the special venire was about to be drawn and that the case was set for trial on the merits the following Monday. After the conversation Mr. Higgs had ample time to come the short distance from Jackson to Canton, a distance of twenty-two miles, before I had finished drawing the special venire, but he did not appear in court on that date, on the date the case was tried on the merits nor on any other date when there were any proceedings had in connection therewith. While the presence of an attorney is not necessary nor expected while a venire is being drawn, Mr. Higgs had ample time, approximately an hour, to get to the courthouse in Canton before the drawing was concluded and the names, addresses, etc. of the veniremen called out and listed by the clerk. Furthermore, Mr. Higgs could have at any time obtained a list of both the regular and special venire which, so far as I know, he never requested.

/S/ L. F. HENRICK

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for said State and County, L. F. Hendrick,

personally known to me, who, after being by me first duly sworn, stated on oath that the foregoing statement is true and correct.

SWORN TO AND SUBSCRIBED before me on this 6th day of April, A. D., 1963.

/S/ H. T. ASHFORD, JR.
Circuit Clerk

IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISS.

STATE OF MISSISSIPPI
COUNTY OF HINDS

AFFIDAVIT

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, S. B. BARNES, Deputy Chief of Police in and for the City of Jackson, County of Hinds, State of Mississippi, who being by me first duly sworn, on oath states that heretofore, beginning on or about January 10, 1963, to and including January 30, 1963, that William L. Higgs, an adult male person, did wilfully and unlawfully contribute to the delinquency of William McKinley Daywalt, III, a minor male person of the age of 16 years, in that he took and harbored said minor child in his home in the First Judicial District of Hinds County, Miss., thereby aiding and encouraging said minor child from returning to or communicating with his parents, William McKinley Daywalt, Jr., and Betty Daywalt, then residents of Lewis Road, Route 2, Collegeville, Pennsylvania, and further, by wilfully and unlawfully seducing and persuading said minor child to permit him, the said William L. Higgs, to gratify his lust by indulging in acts of unnatural and

perverted sex acts, including on several days during the period of time aforesaid, unnatural intercourse by the commission of acts of sodomy per anus and numerous acts of sodomy per os; and further, by subverting the morals of said child, keeping said minor child in clothing, food, shelter and medical attention, with the express purpose of causing said child to continue participating with him in said unlawful acts, contrary to Section 7185-13 of Mississippi Code of 1942, and against the peace and dignity of the State of Mississippi.

/S/ S. B. BARNES

Sworn to and subscribed before me, this the 1st day of February, 1963.

/S/ H. T. ASHFORD, JR.
Circuit Clerk

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, the undersigned authority Russel D. Moore III, Judge of the County Court of Hinds County, Mississippi, S. B. Barnes, who having been first duly sworn by me on his oath says that the matters and things set forth in the affidavit appearing on the reverse side hereof are true and correct as therein stated.

/S/ S. B. BARNES

SWORN TO and subscribed before me, this the 14th day of February, 1963.

/S/ RUSSEL D. MOORE, III
Judge of the County Court of
Hinds County, Mississippi

"We, the Jury, find the defendant guilty as charged."

IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

No. 13,594

STATE OF MISSISSIPPI

VS.

WILLIAM L. HIGGS

JUDGMENT

This cause this day came on for hearing on affidavit filed on the 1st day of February, 1963, charging the Defendant William L. Higgs with the commission of the crime of contributing to the delinquency of a minor, and a warrant for his arrest issued thereon and having been served upon him personally, and, the Defendant having been placed under arrest and in custody posted bond conditioned on his appearance on the 11th day of February, 1963, and there remain from that day until discharge by the Court. That Counsel for the Defendant requested on behalf of the Defendant a trial on the merits to be set on the 14th day of February, 1963, and that upon said date, the State of Mississippi having announced ready for trial in open Court, the Defendant defaulted and failed to appear and having been called three times in open Court entered not his appearance either personally or by counsel, the State of Mississippi, by and through the District Attorney moved the Court to try the Defendant William L. Higgs in Absentia pursuant to the provisions of Section 2519 of the Mississippi Code of 1942, Recompiled; whereupon the Court directed the clerk hereof to notify the Defendant and his counsel of the Courts intention to pass the cause until 9:00 A.M., February 15, 1963, and the Court set the cause over for trial at said hour and date. Further the Court directed

the President of the Hinds County, Mississippi, Bar Association to assist it in the selection of three qualified and eminent attorneys to represent the Defendant should the Defendant and counsel of his choice fail to appear. That thereafter on February 15, 1963, at 9:00 A. M. in the County Court House of the First Judicial District of Hinds County, Mississippi, the Court called this cause and the State of Mississippi, announced ready for trial; and whereupon the Defendant was called three times in open Court and defaulted in his appearance either personally or by counsel of his choice. Counsel selected as aforesaid and appointed by the Court to represent the Defendant then appeared in Court and there filed pleadings in the nature of a Motion to Quash the Affidavit and a Motion for Continuance of this cause, which motions, after argument and consideration by the Court, were overruled. A venire being called, vior dire examination of said venire was conducted by Counsel for the State and the Defendant and a jury composed of Owens Alexander and eleven others, being 12 good men and true drawn from a body of qualified electors of the First Judicial District of Hinds County, Mississippi was impaneled and the trial of said cause proceeded on its merits. Thereafter the jury heard the testimony and evidence and having been given written instructions as to the law and heard argument of Counsel for State and Counsel for Defendant retired to the jury room and deliberated to consider their verdict and presently returned in open court and the following verdict was rendered, to-wit:

"We, the Jury, find the Defendant guilty as charged." Whereupon the Court sentenced the Defendant to serve six months imprisonment in the County Jail and to pay a fine in the amount of $500.00 and all costs of this cause.

ORDERED AND ADJUDGED this 15th day of February, 1963.

/S/ RUSSEL D. MOORE
County Judge

CERTIFICATE OF JUDGE TO SIGNATURE OF COUNTY COURT

STATE OF MISSISSIPPI,
COUNTY OF HINDS.

I, Russel D. Moore, presiding judge of the County Court, Hinds County of the State of Mississippi, do hereby certify that H. T. Ashford, Jr., Clerk of the County Court in and for the said State and County, whose name is subscribed to the foregoing certificate, attached to the foregoing transcript in the case of State of Mississippi vs. William L. Higgs, is and was at the time of signing of said certificate Clerk of said Count, Court in and for said State and County, duly elected, commissioned, qualified and acting, and that he is the officer authorized by law to make such certificate; And that same is in due form of law and that full faith and credit should be given his official act. And that I am well acquainted with the handwriting of the said H. T. Ashford, Jr., and that the signature signed to said certificate is genuine.

Witness my hand as judge of the County Court of the State of Mississippi, this the 1st day of April, 1963.

/S/ RUSSEL D. MOORE
Judge County Court
Hinds County, Miss.

CERTIFICATE OF CLERK TO SIGNATURE OF THE JUDGE

STATE OF MISSISSIPPI,
COUNTY OF HINDS.

I, H. T. Ashford, Jr., Clerk of the County Court in and for the said State and County, do hereby certify that Russel D. Moore, whose signature is affixed to the within and foregoing certificate is and was at the time of the signing of the same, Judge of the County Court, Hinds County, of the State of Mississippi, duly elected, commissioned, qualified and acting; and that with full faith and credit should be given to his official acts, and that I am well acquainted with the handwriting of said Russel D. Moore and that the signature affixed to the foregoing certificate is genuine.

Witness my hand and seal of the County Court, at Jackson, Miss., this the 1st day of April, 1963.

S/ H. T. ASHFORD, JR.
Clerk County Court
Hinds County, Miss.